

	EPAAG to CMM/AH CROSS REFERENCE			
EPAAG 1	Federal Acquisition Regulations System	Other	CMM	AH
1.1.1	Performance Measurement and Management Program (PMMP) Guide			4.2
1.3.1	EPA Procurement Policy			1.2
1.3.2	Procurement Policy Clearance Review Process	New		
1.4.1	Class Deviations to the EPAAR and FAR			1.3
1.4.2	EAS Use of Provisions and Clauses	New		
1.6.1	Reviews, Concurrences, and Checklists			4.1
1.6.2	Ratification of Unauthorized Commitments		1.1	
1.6.3	Contracting Series Training and Certification Program			1.1
1.6.4	Contracting Officer Warrant Program		1.2	
1.6.5	Contracting Officer's Representatives		42.1	
1.6.6	PM's Federal Acquisition Certification Program	New		
1.7.1	EPA Class Determinations/Approvals			1.5
EPAAG 2	Definitions of Words and Terms - Reserved			
EPAAG 3	Improper Business Practices and Personal Conflicts of Interest	Other	CMM	AH
3.1.1	Safeguarding Confidential Business Information			3.1
EPAAG 4	Administrative Matters	Other	CMM	AH
4.5.1	Use of EAS and Electronic Signatures		52.1	
4.5.2	FedConnect Use in EAS (IPN 14-04)	New		
4.6.1	Order Numbering System (deleted per CN 17-22)			13.1
4.8.1	Closing Out and Retiring Contracts			42.5
4.13.1	Access Badge Requirements for On-Site Contractor Employees (Flash Notice)	New		
4.16.1	Procurement Instrument Identifier (PIID) Numbering System	New		
EPAAG 5	Publicizing Contract Actions	Other	CMM	AH
5.3.1	Congressional Notification			5.1
EPAAG 6	Competition Requirements			
6.3.1	Bridge JOFOCs	New		
EPAAG 7	Acquisition Planning	Other	CMM	AH

	EPAAG to CMM/AH CROSS REFERENCE			
7.1.1	Acquisition Planning		7.1	
7.1.2	Contract Bundling Strategies		7.2	
7.1.3	Independent Government Estimates	New		
7.1.100	Purchasing Capital Assets and Property			7.1
EPAAG 8	Required Sources of Supplies and Services	Other	CMM	AH
8.4.1	Federal Supply Schedules (FSS)		8.1	
8.0.100	Requirements for Use of Strategic Sourcing Contract Vehicles	New		
EPAAG 9	Contractor Qualifications	Other	CMM	AH
9.1.1	EPA Contract Prohibition of Corporation w/Felony Convictions or Tax Delinquencies (IPN 12-01)	New		
9.4.1	Debarment, Suspension and Ineligibility			9.4
9.5.1	Procedures for Documenting Organizational Conflict of Interest Decisions Prior to Contract Award		9.1	
9.5.2	Procedures for Handling Post Award Organizational Conflicts of Interest (COI)		9.2	
9.5.3	Early Conflict of Interest (COI) Disclosure		9.3	
EPAAG 10	Market Research			
10.1.1	Market Research Requirements	New		
10.1.2	Additional Market Research Requirements	New		
10.1.3	Communication with Industry	New		
EPAAG 11	Describing Agency Needs - Reserved			
EPAAG 12	Acquisition of Commercial Items - Reserved			
EPAAG 13	Simplified Acquisition Procedures	Other	CMM	AH
13.1.1	Single Source Justifications	New		
13.3.1	Using the Government-wide Commercial Purchase Card		13.3	
13.3.2	Purchase Order Payment Responsibilities		13.4	
13.3.3	Blanket Purchase Agreements		13.1	
13.5.1	Sole Source Justifications	New		
13.3.100	Procurement of Novelty Items for Distribution to the Public and/or to Federal Employees		13.2	
13.3.200	Procurement of Recreational Items for EPA Employees		13.5	

	EPAAG to CMM/AH CROSS REFERENCE			
EPAAG 14	Sealed Bidding - Reserved			
EPAAG 15	Contracting by Negotiation	Other	CMM	AH
15.2.1	Safeguarding Bids and Proposals		3.3	
15.3.1	Source Selection		15.2	
15.4.1	Negotiation Procedures			15.2
15.4.2	Cost Advisory Functions	Deleted		31.1
15.6.1	Unsolicited Proposals		15.1	
EPAAG 16	Types of Contracts	Other	CMM	AH
16.1.1	High-Risk Contracts	New		
16.3.1	Monitoring Level-of-Effort in Cost-Reimbursement Contracts	New		
16.4.1	Use of Cost-Plus-Award-Fee Contracts		16.1	
16.5.1	Issuance of Task or Delivery Orders Under Multiple Award Contracts		16.2	
16.7.100	No-Cost Contracts for Conference Support Services (Flash Notice)	New		
EPAAG 17	Special Contracting Methods	Other	CMM	AH
17.5.1	Interagency Acquisitions (IPN 08-04)	New		
EPAAG 18	Emergency Acquisitions - Reserved			
EPAAG 19	Small Business Programs	Other	CMM	AH
19.8.1	SBA-EPA Partnership Agreement (The 8(a) Program)			19.1
EPAAG 20	Reserved			
EPAAG 21	Reserved			
EPAAG 22	Application of Labor Laws to Government Acquisitions	Other	CMM	AH
22.4.1	Application of Labor Standards to Demolition Contracts			22.2
22.8.1	Equal Employment Opportunity Clearance Procedures			22.1
22.10.1	Compliance with FAR Clause 52.222-43			52.1

	EPAAG to CMM/AH CROSS REFERENCE			
EPAAG 23	Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace	Other	CMM	AH
23.1.1	Green Purchasing Plan		23.1	
EPAAG 24	Protection of Privacy and Freedom of Information - Reserved			
EPAAG 25	Foreign Acquisition - Reserved			
EPAAG 26	Other Socioeconomic Programs - Reserved			
EPAAG 27	Patents, Data, and Copyrights - Reserved			
EPAAG 28	Bonds and Insurance - Reserved			
EPAAG 29	Taxes - Reserved			
EPAAG 30	Cost Accounting Standards Administration - Reserved			
EPAAG 31	Contract Cost Principles and Procedures	Other	CMM	AH
31.2.1	Charging Government Contracts for Contractor Provided Property			31.2
EPAAG 32	Contract Financing	Other	CMM	AH
32.6.1	Processing Contractor Refunds		32.4	
32.7.1	Contract Funding Requirements	Deleted	32.1	
32.7.2	Contract Contingency Balances		32.2	
32.7.3	Review of Unliquidated Obligations	Deleted	32.3	
32.7.4	Accounting for Appropriations in Contracts		7.4	
32.7.5	Contract Funding	New		
32.9.1	Invoice Review Process		11.2	
32.9.2	Do Not Pay (DNP) Database “Hits”			32.9
EPAAG 33	Protests, Disputes, and Appeals	Other	CMM	AH
33.1.1	Protests and Contract Performance			33.2
33.2.1	Alternative Dispute Resolution			33.1

	EPAAG to CMM/AH CROSS REFERENCE			
EPAAG 34	Major System Acquisition - Reserved			
EPAAG 35	Research and Development Contracting			
35.0.100	DURC and iDURC Contracting	New		
EPAAG 36	Construction and Architect-Engineer Contracts - Reserved			
EPAAG 37	Service Contracting	Other	CMM	AH
37.1.1	Agency's Relationship with Contractors	Deleted	3.2	
37.1.3	Contracting for Temporary or Intermittent Personal Services of Students and Recent Graduates		37.2	
37.6.1	Performance-Based Acquisition			37.1
EPAAG 38	Federal Supply Schedule Contracting - Reserved			
EPAAG 39	Acquisition of Information Technology			
39.1.1	IT Acquisition Approval Procedures (IPN 15-07)	New		
39.1.2	Cybersecurity Tasks (IPN 17-01)	New		
EPAAG 40	Reserved			
EPAAG 41	Acquisition of Utility Services - Reserved			
EPAAG 42	Contract Administration and Audit Services	Other	CMM	AH
42.3.1	Management Integrity in Acquisition Systems		42.2	
42.3.2	Contract Management Reporting Requirements			42.2
42.3.3	Agency Shutdowns and Closures		42.4	
42.3.4	Contract Management Plans (IPN 13-06)	New		
42.4.1	CO Site Visits for On-Site Contractors		3.1	
42.7.1	Indirect Cost Rate Agreements			42.1
42.7.2	Tracking Contractor Billings			42.3
42.15.1	Contractor Performance Evaluation		42.15	
EPAAG 43	Contract Modifications - Reserved			
EPAAG 44	Subcontracting Policies and Procedures	Other	CMM	AH
44.2.1	Required Practices Concerning Subcontracts		44.1	

	EPAAG to CMM/AH CROSS REFERENCE			
44.2.2	Prohibition of Directed Subcontracting		44.2	
EPAAG 45	Government Property	Other	CMM	AH
45.1.1	Providing Government Property under EPA Contracts		45.1	
45.1.2	Property Administration		45.2	
45.6.1	Property Disposal		45.3	
EPAAG 46	Quality Assurance	Other	CMM	AH
46.2.1	Guidance for Use of Higher-Level Contract Quality Requirements in Acquisitions		46.1	
EPAAG 47	Transportation - Reserved			
EPAAG 48	Value Engineering – Reserved			
EPAAG 49	Termination of Contracts - Reserved			
EPAAG 50	Extraordinary Contractual Actions and the Safety Act -Reserved			
EPAAG 51	Use of Government Sources by Contractors - Reserved			
EPAAG 52	Solicitation Provisions and Contract Clauses	Other	CMM	AH
52.2	Text of Provisions and Clauses	New		
EPAAG 53	Forms - Reserved			

	ACQUISITION HANDBOOK TO EPAAG CROSS REFERENCE	
AH 1	Federal Acquisition Regulations System	EPAAG
1.1	Contracting Series Training and Certification Program	1.6.3
1.2	Procurement Directives	1.3.1
1.3	Class Deviations to the EPAAR and FAR	1.4.1
1.4	Reserved	
1.5	EPA Class Determinations/Approvals	1.7.1
AH 2	Definitions of Words and Terms - Reserved	
AH 3	Improper Business Practices and Personal Conflicts of Interest	EPAAG
3.1	Safeguarding Confidential Business Information	3.1.1
AH 4	Administrative Matters	EPAAG
4.1	Reviews, Concurrences, and Checklists	1.6.1
4.2	Quality Assessment Plans	1.1.1
AH 5	Publicizing Contract Actions	EPAAG
5.1	Congressional Notification	5.3.1
AH 6	Competition Requirements - Reserved	
AH 7	Acquisition Planning	EPAAG
7.1	Administrative Requirements for Capital Asset Procurement	7.1.100
AH 8	Required Sources of Supplies and Services - Reserved	
AH 9	Contractor Qualifications	EPAAG
9.1	Reserved	
9.2	Reserved	
9.3	Reserved	
9.4	Debarment, Suspension and Ineligibility	9.4.1
AH 10	Market Research - Reserved	
AH 11	Describing Agency Needs - Reserved	

	ACQUISITION HANDBOOK TO EPAAG CROSS REFERENCE	
AH 12	Acquisition of Commercial Items - Reserved	
AH 13	Simplified Acquisition Procedures	EPAAG
13.1	Purchase Order Numbering System	13.3.2
AH 14	Sealed Bidding - Reserved	
AH 15	Contracting by Negotiation	EPAAG
15.1	Weighting of Corporate Experience in Technical Evaluation Criteria	15.3.1
15.2	Negotiation Procedures	15.4.1
AH 16	Types of Contracts - Reserved	
AH 17	Special Contracting Methods - Reserved	
AH 18	Emergency Acquisitions - Reserved	
AH 19	Small Business Programs	EPAAG
19.1	Contracting with the SBA (The 8(a) Program)	19.8.1
AH 20	Reserved	
AH 21	Reserved	
AH 22	Application of Labor Laws to Government Acquisitions	EPAAG
22.1	Equal Employment Opportunity Clearance Procedures	22.8.1
22.2	Application of Labor Standards to Demolition Contracts	22.4.1
AH 23	Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace - Reserved	
AH 24	Protection of Privacy and Freedom of Information - Reserved	
AH 25	Foreign Acquisition - Reserved	

	ACQUISITION HANDBOOK TO EPAAG CROSS REFERENCE	
AH 26	Other Socioeconomic Programs - Reserved	
AH 27	Patents, Data, and Copyrights - Reserved	
AH 28	Bonds and Insurance - Reserved	
AH 29	Taxes - Reserved	
AH 30	Cost Accounting Standards Administration - Reserved	
AH 31	Contract Cost Principles and Procedures	EPAAG
31.1	Cost Advisory Functions (Deleted from EPAAG)	15.4.2
31.2	Charging Government Contracts for Contractor Provided Property	31.2.1
AH 32	Contract Financing	EPAAG
32.1	Modifying Contracts to Eliminate the Paid Cost Role	Deleted
32.2	Reserved	
32.3	Reserved	
32.4	Reserved	
32.5	Reserved	
32.6	Reserved	
32.7	Reserved	
32.8	Reserved	
32.9	Do Not Pay (DNP) Database “Hits”	32.9.2
AH 33	Protests, Disputes, and Appeals	EPAAG
33.1	Alternative Dispute Resolution	33.1.2
33.2	Protests and Contract Performance	33.1.1
AH 34	Major System Acquisition - Reserved	
AH 35	Research and Development Contracting - Reserved	
AH 36	Construction and Architect-Engineer Contracts - Reserved	
AH 37	Service Contracting	EPAAG
37.1	Reporting Performance-Based Contracting Actions	37.6.1

	ACQUISITION HANDBOOK TO EPAAG CROSS REFERENCE	
AH 38	Federal Supply Schedule Contracting	EPAAG
38.1	Issuance of Orders under GSA's MOBIS	Deleted
AH 39	Acquisition of Information Technology - Reserved	
AH 40	Reserved	
AH 41	Acquisition of Utility Services - Reserved	
AH 42	Contract Administration and Audit Services	EPAAG
42.1	Indirect Cost Rate Agreements	42.7.1
42.2	Contract Management Reporting Requirements	42.3.2
42.3	Tracking Contractor Billings	42.7.2
42.4	Requests for Contractor Performance Evaluations	Deleted
42.5	Standard Process for Closing-Out and Retiring Completed Contracts	4.8.1
AH 43	Contract Modifications - Reserved	
AH 44	Subcontracting Policies and Procedures - Reserved	
AH 45	Government Property - Reserved	
AH 46	Quality Assurance - Reserved	
AH 47	Transportation - Reserved	
AH 48	Value Engineering – Reserved	
AH 49	Termination of Contracts - Reserved	
AH 50	Extraordinary Contractual Actions and the Safety Act - Reserved	
AH 51	Use of Government Sources by Contractors - Reserved	
AH 52	Solicitation Provisions and Contract Clauses	EPAAG

	ACQUISITION HANDBOOK TO EPAAG CROSS REFERENCE	
52.1	FAR Clause 52.222-42	22.10.1
52.2	Use of Automated Systems - SPEDI	Deleted
AH 53	Forms - Reserved	

	CONTRACTS MANAGEMENT MANUAL (CMM) TO EPAAG CROSS REFERENCE	
CMM 1	Federal Acquisition Regulations System	EPAAG
1.1	Ratification of Unauthorized Commitments	1.6.2
1.2	Contracting Officer Warrant Program	1.6.4
CMM 2	Definitions of Words and Terms - Reserved	
CMM 3	Improper Business Practices and Personal Conflicts of Interest	EPAAG
3.1	Contracting Officer Site Visits for On-Site Contractors	42.4.1
3.2	Agency's Relationship with Contractors	37.1.1
3.3	Safeguarding Bids and Proposals	15.2.1
CMM 4	Administrative Matters - Reserved	
CMM 5	Publicizing Contract Actions - Reserved	
CMM 6	Competition Requirements - Reserved	
CMM 7	Acquisition Planning	EPAAG
7.1	Three-year Acquisition Plans	7.1.1
7.2	Contract Bundling Strategies	7.1.2
7.3	Reserved	
7.4	Accounting for Appropriations in Contracts	32.7.4
CMM 8	Required Sources for Supplies and Services	EPAAG
8.1	Issuance of Orders Under GSA Federal Supply Schedules (FSS)	8.4.1
CMM 9	Contractor Qualifications	EPAAG

	CONTRACTS MANAGEMENT MANUAL (CMM) TO EPAAG CROSS REFERENCE	
9.1	Procedures for Documenting Organizational Conflict of Interest Decisions Prior to Contract Award	9.5.1
9.2	Procedures for Handling Post Award Organizational Conflicts of Interest (COI)	9.5.2
9.3	Early Conflict of Interest (COI) Disclosure	9.5.3
CMM 10	Market Research - Reserved	
CMM 11	Describing Agency Needs	EPAAG
11.1	Statements of Work	Deleted
11.2	Invoice Review Process	32.9.1
CMM 12	Acquisition of Commercial Items - Reserved	
CMM 13	Simplified Acquisition Procedures	EPAAG
13.1	Blanket Purchase Agreements	13.3.3
13.2	Procurement of Novelty Items for Distribution to the Public and/or to Federal Employees	13.3.100
13.3	Using the Government wide Commercial Purchase Card	13.3.1
13.4	Purchase Order Payments to Finance Offices	13.3.2
13.5	Procurement of Recreational Items for EPA Employees	13.3.200
CMM 14	Sealed Bidding - Reserved	
CMM 15	Contracting by Negotiation	EPAAG
15.1	Unsolicited Proposals	15.6.1
15.2	Use of Past Performance as an Evaluation Factor in the Award of EPA Contracts	15.3.1

	CONTRACTS MANAGEMENT MANUAL (CMM) TO EPAAG CROSS REFERENCE	
CMM 16	Types of Contracts	EPAAG
16.1	Use of Cost-Plus-Award-Fee Contracts	16.4.1
16.2	Issuance of Task or Delivery Orders Under Multiple Award Contracts	16.5.1
CMM 17	Special Contracting Methods - Reserved	
CMM 18	Emergency Acquisitions - Reserved	
CMM 19	Small Business Programs - Reserved	
CMM 20	Reserved	
CMM 21	Reserved	
CMM 22	Application of Labor Laws to Government Acquisitions - Reserved	
CMM 23	Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace	EPAAG
23.1	Green Purchasing Plan	23.1.1
CMM 24	Protection of Privacy and Freedom of Information - Reserved	
CMM 25	Foreign Acquisition - Reserved	
CMM 26	Other Socioeconomic Programs - Reserved	
CMM 27	Patents, Data, and Copyrights - Reserved	

	CONTRACTS MANAGEMENT MANUAL (CMM) TO EPAAG CROSS REFERENCE	
CMM 28	Bonds and Insurance - Reserved	
CMM 29	Taxes - Reserved	
CMM 30	Cost Accounting Standards Administration - Reserved	
CMM 31	Contract Cost Principles and Procedures - Reserved	
CMM 32	Contract Financing	EPAAG
32.1	Contract Funding Requirements (Deleted from EPAAG)	32.7.1
32.2	Contract Contingency Balances	32.7.2
32.3	Review of Unliquidated Obligations Under Contracts (Deleted from EPAAG)	32.7.3
32.4	Processing Contractor Refunds	32.6.1
CMM 33	Protests, Disputes, and Appeals - Reserved	
CMM 34	Major System Acquisition - Reserved	
CMM 35	Research and Development Contracting - Reserved	
CMM 36	Construction and Architect-Engineer Contracts - Reserved	
CMM 37	Service Contracting	EPAAG
37.1	Performance-Based Acquisition	37.6.1
37.2	Contracting for Temporary or Intermittent Personal Services of Students and Recent Graduates	37.1.3

	CONTRACTS MANAGEMENT MANUAL (CMM) TO EPAAG CROSS REFERENCE	
CMM 38	Federal Supply Schedule Contracting - Reserved	
CMM 39	Acquisition of Information Technology - Reserved	
CMM 40	Reserved	
CMM 41	Acquisition of Utility Services - Reserved	
CMM 42	Contract Administration and Audit Services	EPAAG
42.1	Contracting Officer's Representatives (Replaced with IPN 13-03)	1.6.5
42.2	Management Integrity In Acquisition Systems	42.3.1
42.3	Reserved	
42.4	Agency Shutdowns and Closures	42.3.3
42.5	Guidance for Use of Program Office Interface (POI)	Deleted
42.15	Contractor Performance Information	42.15.1
CMM 43	Contract Modifications - Reserved	
CMM 44	Subcontracting Policies and Procedures	EPAAG
44.1	Required Practices Concerning Subcontracts	44.2.1
44.2	Prohibition of Directed Subcontracting	44.2.2
CMM 45	Government Property	EPAAG
45.1	Providing Government Property under EPA Contracts	45.1.1
45.2	Property Administration	45.1.2
45.3	Property Disposal	45.6.1

	CONTRACTS MANAGEMENT MANUAL (CMM) TO EPAAG CROSS REFERENCE	
CMM 46	Quality Assurance	EPAAG
46.1	Guidance for Use of Higher-Level Contract Quality Requirements in Acquisitions	46.2.1
CMM 47	Transportation - Reserved	
CMM 48	Value Engineering - Reserved	
CMM 49	Termination of Contracts - Reserved	
CMM 50	Extraordinary Contractual Actions and the Safety Act - Reserved	
CMM 51	Use of Government Sources by Contractors - Reserved	
CMM 52	Solicitation Provisions and Contract Clauses	EPAAG
52.1	Use of Electronic Signatures Between EPA and Contractors	4.5.1
CMM 53	Forms - Reserved	

CHAPTER 1 – FEDERAL ACQUISITION REGULATIONS SYSTEM

Section 1.1 – Purpose, Authority, Issuance

Subsection 1.1.1 – Performance Measurement and Management Program (PMMP) Guide (April 2019)

The Quality Assessment Program contained in Acquisition Handbook Unit 4.2, was replaced in 2012 with the Contract Management Assessment Program (CMAP) which is described in Part 6 of the Office of Acquisition Solutions (OAS), Performance Measurement and Management Program (PMMP) Guide.

1.1.1.1 Purpose.

The purpose of this subsection is to ensure all EPA contracting organizations follow the requirements outlined in Part 6 of the PMMP Guide.

1.1.1.2 Background.

The PMMP Guide is OAS's methodology for assessing the Agency's acquisition related business functions. The PMMP is intended to facilitate an EPA-wide collaborative approach to ensure that business systems effectively support EPA's mission, vision, and strategy statements; follow best business management practices; and comply with applicable statutes, regulations, and contract terms and conditions. Through the utilization of the CMAP, the Agency can strengthen its acquisition systems and its workforce. The intended result is to ensure a world class high performing operation at EPA.

Part 6 of the PMMP Guide outlines the CMAP which is a system of controls designed to measure operational awareness and to assess how well EPA's contracting organizations comply with all acquisition requirements and support their respective program customers. The CMAP includes four primary components: Internal Control Plans; Self-Assessment Reviews; Annual Self-Assessment Reporting; and CMAP Peer Reviews. These four components provide the ability to identify and correct systemic vulnerabilities which in turn provides safeguards against waste, fraud and abuse.

1.1.1.3 Authority/Applicability [Reserved].

1.1.1.4 Definitions [Reserved].

1.1.1.5 Policy.

Contracting organizations shall comply with all requirements of PMMP Guide Part 6, CMAP, which can be found on the OAS [Knowledge Management Site](#) under CMAP.

Section 1.3 – Agency Acquisition Regulations

Subsection 1.3.1 – EPA Procurement Policy (December 2019)

This subsection was previously Unit 1.2 of the Acquisition Handbook.

1.3.1.1 Purpose.

The purpose of this subsection is to provide a synopsis of EPA's procurement policy and guidance documents.

1.3.1.2 Background.

Regulatory requirements for the acquisition process are set forth in the Federal Acquisition Regulation (FAR). EPA's procurement policy is contained in two procurement sources, the EPA Acquisition Regulation (EPAAR) and the EPA Acquisition Guide (EPAAG). In situations requiring urgent policy implementations, Interim Policy Notices (IPN) are issued until the EPAAR or EPAAG has been revised or the IPN expires.

The Manager of the Acquisition Policy and Training Branch (APTB) is responsible for coordinating changes to the EPAAR and EPAAG. Changes to the EPAAR or EPAAG may be directed to the Manager of the APTB in accordance with EPAAG 1.3.2. Specific acquisition questions should be sent to the Acquisition Policy mailbox (OMS-ARM-OAS-AcquisitionPolicy@epa.gov).

1.3.1.3 Authority/Applicability.

According to FAR 1.3, each agency may issue internal agency acquisition guidance. The EPAAR and EPAAG are issued under the authority of FAR 1.3 and the EPA Delegations Manual (1-2 Acquisition Management).

The Office of Federal Procurement Policy (OFPP) Act 41 U.S.C. 414(c)(1) authorizes the agency's Senior Procurement Executive (SPE) to be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

EPA's Delegations Manual, *1-2 Acquisition Management*, 1(c) states that the Office of Acquisition Solutions (OAS) Director is designated as the SPE, and 1(b) states that the SPE manages the direction of procurement policy for the executive agency, including implementing unique procurement policies, regulations and standards.

Consequently, the SPE is solely responsible for acquisition issues within the EPA and is the single decision authority for all EPA acquisition matters. In accordance with the OFPP Act and EPA's Delegations Manual, the SPE is responsible for selecting and appointing contracting officers, while contracting officers designate and authorize contracting officer's representatives (COR) per FAR 1.602-2(d).

Non-compliance of agency procurement policies, regulations and standards or of the FAR is subject to the SPE's authority and falls under SPE jurisdiction. Non-compliance may result in the SPE rescinding or lowering delegations of procurement authority including contracting officer warrants, purchase cards, and COR appointments. Contracting officers can also rescind COR appointments for non-compliance.

1.3.1.4 Definitions [Reserved].

1.3.1.5 Policy.

1.3.1.5.1 EPA's Procurement Policy

1.3.1.5.1.1 Environmental Protection Agency Acquisition Regulation (EPAAR)

The EPAAR contains Agency acquisition regulations that implement or supplement FAR policies and procedures to satisfy the specific needs of the EPA. The EPAAR is located and maintained on the eCFR website.

Proposed EPAAR policy is required to be published in the Federal Register for public comment. "Publication of proposed regulations", 41 U.S.C. 1707, paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors.

1.3.1.5.1.2 Environmental Protection Agency Acquisition Guide (EPAAG)

The EPAAG contains the Agency's acquisition policies and procedures that primarily affect Agency internal operating procedures. Unlike the EPAAR, EPAAG's policy is not required to be published for public comment but is subject to review per the clearance review process in EPAAG 1.3.2.

The EPAAG is located on the OAS intranet website under EPA-Specific Procurement Policy.

1.3.1.5.1.3 Interim Policy Notice (IPN)

IPNs are used in limited situations requiring urgent policy implementation resulting from an Executive Order (EO), law, regulation other governing source. Urgent or immediate implementation means within a timeframe that does not allow the Agency to issue policy through the normal development and approval process.

IPNs are authorized only at the direction of the SPE. The use of IPNs is not intended to expedite policy development in lieu of the standard policy development processes, such as publishing

EPAAR regulations in the Federal Register for public comment or going through the clearance review process for the EPAAG.

All IPNs issued will state whether the policy will be memorialized in the EPAAR or EPAAG or will expire by a particular date.

IPNs will be issued through Change Notices if the IPN states it will be incorporated into the EPAAG or EPAAR, otherwise IPNs will be issued through Flash Notices.

IPNs are located on the OAS intranet website under EPA-Specific Procurement Policy.

1.3.1.5.2 EPA Procurement Notices and Information

1.3.1.5.2.1 Change Notice (EPAAR and EPAAG)

Change Notices will announce changes to the EPAAR or EPAAG. Change Notices (a) summarize approved changes to the EPAAG or EPAAR, (b) explain why the changes were necessary, (c) describe the benefits of making the changes, (d) describe any affect the changes have on current policy, and (e) state the effective date of the changes.

Change Notices are located in the EPAAG on the OAS intranet website under EPA-Specific Acquisition Policy.

1.3.1.5.2.2 Flash Notice

Flash Notices are a communication tool that is used to communicate important acquisition issues quickly to the contracting community. Flash Notices are not policy documents, but they may be used to distribute information about new policy.

Flash Notices are located on the OAS intranet website under EPA-Specific Acquisition Policy.

Subsection 1.3.2 – Procurement Policy Clearance Review Process (December 2019)

1.3.2.1 Purpose.

This subsection describes the process for approving changes to existing EPA Acquisition Guidance and approving new guidance.

1.3.2.2 Background [Reserved].

1.3.2.3 Authority/Applicability.

According to FAR 1.3, each agency may issue internal agency acquisition guidance. The EPAAR and EPAAG are issued under the authority of FAR 1.3 and the EPA Delegations Manual (1-2 Acquisition Management).

1.3.2.4 Definitions.

Administrative Changes - Administrative changes are non-substantive changes such as correcting/updating addresses, dates, figures, and making other changes that do not affect policy materially. Administrative changes to EPA acquisition policy shall be approved by the Acquisition Policy and Training Branch (APTB) Manager and generally will not require notification. If notification is required, a Change Notice will be issued.

Change Notice (EPAAG or EPAAR) – Change Notices (a) summarize approved changes to the EPAAG or EPAAR, (b) explain why the changes were necessary, (c) describe the benefits of making the changes, (d) describe any affect the changes have on current policy, and (e) state the effective date of the changes.

Each change notice will be numbered by fiscal year and consecutive number (i.e., EPAAG Change Notice 15-01). After the Notice has been issued it will be posted on the EPAAG and the change package with all documentation will be filed on the applicable APTB website folder.

IPNs will be issued through Change Notices if the IPN states it will be incorporated into the EPAAG or EPAAR, otherwise IPNs will be issued through Flash Notices.

Stakeholders - Stakeholders are individuals and/or offices that have a legitimate interest or are a participant in the acquisition process. Stakeholders are often the liaison (point of contact) between their organization and APTB. It is the responsibility of the stakeholders to distribute acquisition information such as request for reviews to the appropriate personnel within their organization.

Subject Matter Expert - a person who is an expert in a particular area or topic such as property, debarment, small business, quality assurance, IT security, etc.

1.3.2.5 EPAAG Clearance Review Process.

Changes to the EPAAG, except for administrative changes, shall follow the following procedures.

1.3.2.5.1 Request for Change to EPAAG Memorandum

- (a) Requestor shall draft a Memorandum requesting a change to the EPAAG to be signed by the respective OAS Division Director (DD)* or program office equivalent;

*Regional contracting offices must submit the Request Memorandum through Headquarters Acquisition Division (HAD) for the Division Director's review and approval. The Request Memorandum shall describe any potential impact to any of the Superfund classes of contracts.

- (b) Directed to the Manager of APTB of OAS;
- (c) Clearly identifying the proposed change to an existing EPAAG section and explaining the purpose, reason or benefit for the change; or

Providing a draft of a new EPAAG section or language, explaining the purpose, reason or benefit for the change, documenting that the new requirement does not conflict with any other policy, and indicating whether the new requirement has a significant effect beyond EPA internal operating procedures or a significant cost or administrative impact on contractors;

- (d) Identifying the stakeholders or impacted organizations of the change and whether they have been consulted;
- (e) Identifying the requestor's point of contact including contact information;
- (f) Attaching change pages and/or supporting documentation, if applicable.

1.3.2.5.2 Preparation and Approval of Initial Change Package

- (a) After receipt and acceptance of the Request for Change, the assigned procurement analyst shall analyze the request and coordinate with the requestor, any subject matter expert(s), Office of General Counsel and/or develop a working group as necessary to develop an initial change package.
- (b) Procurement analyst prepares initial change package following Appendix 1.3.2-B and Appendix 1.3.2-C as applicable. Any EPAAG change pages must adhere to the EPAAG format template in Appendix 1.3.2-A. The change package will document all changes and detail what has been removed and/or added to a Section and why. The change package will include a copy of the original policy thereby serving as a history of previous versions of the chapters and sections.

(c) Initial change package will identify which stakeholders or organizations are potentially affected by the proposed change, such as contracting officers, and acquisition personnel (includes CORs, program managers, etc.). Possible stakeholder addressee distribution lists include:

- RAMs – Regional Acquisition Managers
- SACOs – Simplified Acquisition Contracting Officers
- OAS Division Directors and Special Assistants
- Acquisition Personnel (includes CORs, program managers, etc.)
- Subject Matter Experts
- Other stakeholders as applicable

(d) OAS’s Policy, Training, and Oversight (PTOD) Director approves initial change package.

1.3.2.5.3 Review and Comment

(a) Procurement analyst will disseminate the proposed changes to the chosen stakeholders with a minimum ten-business-day review period.

(b) If necessary, the procurement analyst may include in the request for reviewers to comment whether the new Section or language has a significant effect beyond EPA internal operating procedures or a significant cost or administrative impact on contractors.

(c) Stakeholders are responsible for distributing requests for review of proposed changes within their organization to the appropriate personnel.

(d) Stakeholders will identify each comment submitted as one of the three following categories:

- Advisory Comment – no response from APTB required.
- Issue Resolution Requested Comment – comment submitted requires resolution between the stakeholder and APTB.
- No Comment – meaning concur without Comment.

If an office does not respond by the deadline, the lack of response will be considered “no comment.” If comments are not classified by category then they will be considered “Advisory Comments.”

(e) Procurement analyst reviews comments and resolves Issue Resolution Requested comments with the assistance of the requestor. If necessary, SPE shall give the final approval on unresolved comments.

1.3.2.5.4 Preparation and Approval of Final Change Package

- (a) Procurement analyst prepares final change package following Appendix 1.3.2–B and Appendix 1.3.2-C including aggregating and addressing comments. Non-concurrence of comments shall be fully explained.
- (b) As applicable, procurement analyst documents whether the new EPAAG section or language has a significant effect beyond EPA operating procedures or a significant cost or administrative impact on contractors (OFPP Act, 41 U.S.C. Section 418b).

If the new EPAAG section or language does have a significant effect beyond EPA internal operating procedures or a significant cost or administrative impact on contractors, the new Section or language shall fall under the EPAAR instead of the EPAAG. EPAAR clearance review process must be followed. Otherwise, the new Section or language will fall under the EPAAG and the instructions herein will be followed.

- (c) Documented Office of General Counsel concurrence is required and must be submitted with the package.
- (d) Package is acknowledged by requestor, and subject matter experts as applicable.
- (e) SPE approves change request by initialing EPA Form 1320-1A.
- (f) Requester is notified of SPE's decision.
- (g) Procurement analyst issues EPAAG Change Notice.

The EPAAG Change Notice will (a) summarize approved changes to the EPAAG, (b) explain why the changes were necessary, (c) describe the benefits of making the changes, (d) describe any affect the changes have on current policy, and (e) state the effective date of the changes.

The change notice will be numbered by fiscal year and consecutive number (i.e., EPAAG Change Notice 15-01).

After the Notice has been issued it will be posted on the EPAAG.

The change package with all documentation will be filed on the applicable APTB website by Change Notice number.

APPENDIX 1.3.2–A

EPAAG FORMAT TEMPLATE

- All information must be in Microsoft Word, no PDF files.
- All information will be in Times New Roman font, size 12, except the Chapter, Section and Subsection Titles will use size 14.
- Chapter titles correspond with FAR Part titles, and Section titles correspond with FAR Subpart titles. Subsection titles are EPA specific.
- Center Chapter Title in the middle top of page in all caps, bold print. Section, subsection, etc. titles will be align left of page, be in bold print, first letter of each word in caps.
- Chapter Title line will consist of chapter number, followed by a hyphen, followed by title. Section title line will consist of section number, followed by a hyphen, followed by title. Subsection title line will consist of subsection number, followed by a hyphen, followed by the title, followed by the month and year approved in parenthesis. Every time the subsection is updated, the date will also be updated.

For those topics that are unique to EPA, the policy will be assigned to the most applicable FAR Part and Subpart but will have a different numbering sequence. The subsection number will begin with “100” instead of “1”, e.g. “EPAAG 7.1.100”.

- Purpose, Background, Authority/Applicability, Definitions and Policy are standard sub-sub-section titles. Additional sub-sections can be added as applicable. Bold each number and title in the sub-sub-section, first letter of each word is in caps, period follows title. If any sub-section is reserved, put the word **[Reserved]** in bold print after the title followed by a period.
- All additional information is organized and numbered as follows: (a), (1), (i), (A), (1), (i).
- All appendix and attachments will be numbered “X.X.X-A” and like the Chapter Titles will be centered in the middle of the page in all caps, bold print. Appendix or attachment number is on one line, the title is on the second line.

Appendix and attachments are supplementary materials at the end of a document. Attachments are generally documents that could stand by themselves without the main documents and still have meaning. Appendixes when removed from the main document lose their meaning.

See example on next page.

CHAPTER 5 – TITLE OF CHAPTER (follows the FAR)

Section 5.1 - Title of Section (follows the FAR)

Subsection 5.1.1 – Title is EPA Specific (October 2014) (month and year when IPN or subsection was originally approved or last changed/updated)

This section was previously Unit 5.1 of the Acquisition Handbook; or

This section was previously Chapter 5.1 of the Contracts Management Manual; or

This section was previously Interim Policy Notice (IPN) 2014-05.

5.1.1.1 Purpose.

5.1.1.2 Background.

5.1.1.3 Authority/Applicability.

5.1.1.4 Definitions [Reserved].

5.1.1.5 Policy.

5.1.1.5.1 Title

5.1.1.5.2 Title

5.1.1.5.3 Title

5.1.1.6 Other Subsubsection as applicable.

(a)

(1)

(i)

(A)

(1)

(i)

Information is organized and numbered as follows: (a)(1)(i)(A)(1)(i).

Subsection 5.1.100 - Title (EPA specific numbering for EPA unique topics)

5.1.100.1 Purpose.

5.1.100.2 Background.

5.1.100.3 Authority/Applicability.

APPENDIX 1.3.2–B

EPAAG CHANGE REQUEST FOLDER

INSIDE

LEFT	RIGHT
<p>__ Executive Summary (use format on next page)</p> <p>__ Strikeout version (ALL changes to the original document).</p> <p>__ Original version of policy.</p> <p>__ Supporting Documentation:</p> <ul style="list-style-type: none">__ correspondence__ comments/responses__ request for comments__ related guidance, statute, executive order or mandates <p>*attach CD to lower left side of the folder*</p>	<p>__ Proposed revision (w/o strikeouts) *clip to folder*</p> <p>__ Change Notice</p> <p>__ Print Page 1 of the proposed revision on the “yellow” concurrence Sheet. (EPA Form 1320-1A) *staple to the folder*</p>

OUTSIDE

paper clip or staple

__ PTOD Routing Slip.

__ Divisional Routing Slip to Immediate Office when applicable.

Executive Summary

ISSUE/ACTION:

- What is the action? Provide background/history of the action/issue? [Provide a brief summary]
- When is the action due and to whom?
- What prompted this action/issue? [Give a brief explanation of the source]
- Include as an attachment any related correspondence. [You may reference where it is in the package]

ASSUMPTION(S):

- What are your assumptions and what is the logic behind them?

METHODOLOGY:

- What is your plan of action and methodology to resolve or address the action/issue?
- What is the impact on current OAS policy guidance?
- What is the benefit or value of taking this action?
- Current Status of Issue/Action?

STAKEHOLDER(S):

- Who are the stakeholders that are involved in this action/issue, i.e., OMB, Congressional, IG, GAO, etc?
- Did you engage them in the action/issue, i.e., did they review the product, were there meetings held, etc.? Please provide a spreadsheet to disposition all comments.

POINT OF CONTACT:

- Name of person and office [Please include an alternate]

LIST OF ATTACHMENTS:

- 1.
- 2.
- 3.

Section 1.4 – Deviations from the FAR

Subsection 1.4.1 - Class Deviations to the EPAAR and FAR (MAY 2020)

This subsection was previously Unit 1.3 of the Acquisition Handbook.

1.4.1.1 Purpose.

This subsection identifies approved class deviations to the EPAAR and FAR. A numerical listing and copies of class deviations, with their deviated provisions and clauses if applicable, are provided in this subsection.

1.4.1.2 Background.

Some of the older class deviations in this subsection have been redrafted from the original signature copies to display current EPAAR references. The original signature copies are maintained in the Acquisition Policy and Training Service Center.

1.4.1.3 Authority/Applicability.

In accordance with EPAAR Subpart 1501.401, individual and class deviations must be approved by the Head of the Contracting Activity (HCA). FAR Subpart 1.401 defines deviations. Deviations to the EPAAR or FAR involve modifying the language of EPAAR or FAR solicitation provisions and/or contract clauses. The class deviations in this subsection may be reproduced.

1.4.1.4 Definitions [Reserved].

1.4.1.5 Policy.

1.4.1.5.1 Procedures

All requests for deviations must include background information identifying the deviation request, a justification indicating why the deviation is required, and what the deviation will accomplish. Contracting officers shall review full text class deviations prior to making a determination of appropriate use. Contracting officers may reproduce copies of the class deviations in this subsection and insert the copies in the official contract file.

1.4.1.5.2 Sample

A sample of the proper format for EPAAR and FAR class deviations is included on the next page.

- SAMPLE -

FORMAT FOR EPAAR AND FAR CLAUSE DEVIATIONS

**U.S. ENVIRONMENTAL PROTECTION AGENCY
CLASS DEVIATION TO EPAAR 1552.237-72,
“KEY PERSONNEL”**

FINDINGS

1. EPAAR 1552.237-72, “Key Personnel” prohibits the substitution of key personnel by the contractor during the first ninety (90) days of contract performance unless the substitution is necessitated by illness, death, or termination of employment.
2. The continued success of the Agency’s programs is conditioned, in part, on the continued assignment of key personnel to specific positions identified in the contract for differing number of days.
3. Contract operations may be disrupted when the contractor substitutes key personnel during the early stages of contract performance.
4. Contracting Officers should have the flexibility to identify the required number of days of key personnel commitment during the early stages of contractor performance. The length of time will be based on the requirements of individual acquisitions when continued assignment is essential to the successful implementation of the program’s mission.

DETERMINATION

Under the authority of EPAAR 1501.404 and based upon the above findings, I grant the following class deviation:

1. Contracting Officers may use a clause substantially the same as in EPAAR 1552.237-72 regarding substitution of key personnel without requesting a deviation to the EPAAR.
2. Contracting Officers may include a different number of days in excess of the ninety (90) days included in this clause, if approved at one level above the Contracting Officer.
3. This deviation supersedes all previous class deviations to this clause and is effective at the date of signature below, and shall remain in effect until superseded by an amendment to the EPAAR.

[Insert Office Director’s Name]
Office of Acquisition Management

Date

1.4.1.5.3 Listing of Class Deviations, with Provisions and Clauses if applicable, to the EPAAR and FAR

<u>EPAAR</u>	<u>TITLE</u>	<u>APPROVAL DATE</u>	<u>PAGE</u>
1. 1552.235-79	Release of Contractor Confidential Business	03/02/2001	4
2. 1552.232-70	Submission of Invoices	06/00/1996	8
1552.232-70	Alternate I	06/00/1996	9
3. 1552.216-73	Fixed Rates for Services— Indefinite Delivery/ Indefinite Quantity Contract	04/13/2018	16

<u>FAR</u>	<u>TITLE</u>	<u>APPROVAL DATE</u>	<u>PAGE</u>
1. 3.900(a)&(b), 3.908-9, 52.212-4(r) Employees 52.212-5, and 52.3	Whistleblower Protections for Contractor	12/01/2017	19
2. 2.101, 52.203-16 52.212-1 52.219-9 52.219-9 Alt. IV	National Defense Authorization Act FY 2018 Increase Micro-purchase and Simplified Acquisition Thresholds	04/20/2018	24
3. 9.406-3(b)(1), (c) and (e) 9.407-3(b)(1), (c) & (d)(4)	Debarment and Suspension Notifications	04/02/2020	30
4. 32.009, 32.501-1, 32.903, 32.906, 52.212-5, 52.213-4, Increased Progress Payment Rates 52.232-16, Alternate I, 52.232-40, 52.244-6	Accelerated Payments to Small Business Contractors and Subcontractors and	05/28/2020	36

U.S. ENVIRONMENTAL PROTECTION AGENCY**CLASS DEVIATION TO EPAAR 1552.235-79
FOR START AND ERRS CONTRACTS****RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION**

This class deviation is issued pursuant to EPAAR 1501.403 which authorizes the Head of the Contracting Activity to issue class deviations.

FINDINGS

1. EPA regional Superfund Technical Assessment and Response Team (START) contracts provide technical assistance to the regions for emergency response, removals, site assessment and other activities related to the release or threat of release of oil, petroleum products, hazardous substances, or pollutants and contaminants that pose an actual or potential threat to human health or welfare, or to the environment. EPA Emergency and Rapid Response Services (ERRS) contracts provide environmental response cleanup services for removal/treatment of oil, petroleum products, hazardous substances, pollutants or contaminants.
2. EPAAR clause 1552.235-79 Release of Contractor Confidential Business Information (April 1996)" is included in the START-2 and ERRS contracts. This clause clearly requires START and ERRS contractors to consent to a limited release of their confidential business information (CBI) for the purpose of recovering federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
3. EPAAR clause 1552.235-79 does not currently require the same consent for the purpose of recovering Federal funds expended for the removal of oil pursuant to Section 311(c) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA). When the clause was drafted in 1996, most oil spill response work was performed under U.S. Coast Guard contracts, not under START and ERRS contracts. The omission of references to the CWA and the OPA in the original draft of this clause likely resulted from this fact. START and ERRS contracts are now routinely used for oil spill responses and the lack of contractor consent is hindering cost recovery for these responses. Specifically, invoices which include costs for oil spill responses must be redacted during the cost recovery process to prevent CBI (generally contractor billing rates) from being released without consent.
4. The purpose of this deviation is to require the START and ERRS contractors to consent to the same limited release of CBI for the purpose of recovering federal funds expended pursuant to the CWA, OPA and CERCLA. In addition, the deviation adds references to other federal agencies frequently involved in the cost recovery process and clarifies the confidentiality agreement requirements. The changed portions of the clause are bolded.

DETERMINATION

Complete cost information is vital to the Government's ability to recover federal funds expended for oil spill responses from the parties responsible for these spills. This class deviation is in the best interest of the Government because it will allow the Agency to release cost information from the ERRS and START contracts to federal agencies and other parties involved in oil spill cost recovery efforts. Based on the above findings and the authority of EPAAR 1501.403, I approve the attached deviation to EPAAR 1552.235-79.

/S/
Judy S. Davis, Acting Director
Office of Acquisition Management

March 22, 2001
Date

Attachment

H.26 RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (EPAAR 1552.235-79) (MARCH 2001) DEVIATION

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 C.F.R. Part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to, the following:

(1) To Agency contractors **and other federal agencies and their contractors** tasked with **recovery, or** assisting the Agency in the recovery, of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9607, as amended, (CERCLA or Superfund)**and/or Sec. 311(c) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 1321(c));**

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising and representing the Agency **or other federal agencies** in procedures for the recovery of Superfund expenditures **and costs and damages to be deposited to the Oil Spill Liability Trust Fund (OSLTF);**

(3) **To the U.S. Department of the Treasury and contractors employed by that department for use in collecting costs to be deposited to the Superfund or the OSLTF;**

(4) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. Sec. 9607), **OPA Sec.1002 (33 U.S.C. 2702), or CWA Sec. 311 (33 U.S.C. 1321)** and their insurers **or guarantors** (APotentially Responsible Parties')for purposes of facilitating **collection,** settlement or litigation of claims against such parties;

(5) To other Agency contractors who, for purposes of performing the work required under their respective contracts, require access to information **that** the Agency obtained under the Clean Air Act (42 U.S.C. 7401 et seq.); **the CWA** (33 U.S.C. 1251 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq); the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); CERCLA (42 U.S.C. 9601 et seq.); **or the OPA (33 U.S.C. 2701 et seq.)**

(6) To other Agency contractors tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(7) To employees of grantees working at EPA under the Senior Environmental Employment (SEE) Program;

(8) To the Speaker of the House, President of the Senate, or Chairman of a **Congressional** Committee or Subcommittee;

(9) To entities such as the General Accounting Office, boards of contract appeals, and the courts in the resolution of solicitation or contract protests and disputes;

(10) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions, for the Agency; and

(11) Pursuant to a court order or court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled "Screening Business Information for Claims of Confidentiality" and "Treatment of Confidential Business Information.") Except where otherwise provided by law, **CBI shall only be released under subparagraphs (1),(2), (3),(4),(5), (6),(7), or (10)** pursuant to a confidentiality agreement.

(d) With respect to **EPA** contractors, EPAAR 1552.235-71 will be used as the confidentiality agreement. **With respect to contractors for other federal agencies, EPA will expect these agencies to enter into similar confidentiality agreements with their contractors.** With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA, **the CWA, or the OPA.** Such entities include, but are not limited to, accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the Contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

Section 1552.232-70 is revised to read as follows:

1552.232-70 Submission of Invoices.

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (JUN 1996)(DEVIATION)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following contract requirements in addition to the requirements of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted as an original and five copies. The Contractor shall submit the invoice or request for contract financing payment to the following offices/individuals designated in the contract: the original and two copies to the Accounting Operations Office shown in Block ____ on the cover of the contract; two copies to the Project Officer (the Project Officer may direct one of these copies to a separate address); and one copy to the Contracting Officer.

(b) The Contractor shall prepare its invoice or request for contract financing payment on the prescribed Government forms. Standard Forms Number 1034, Public Voucher for Purchases and Services other than Personal, shall be used by contractors to show the amount claimed for reimbursement. Standard Form 1035, Public Voucher for Purchases and Services other than Personal - Continuation Sheet, shall be used to furnish the necessary supporting detail or additional information required by the Contracting Officer. The Contractor may submit self-designed forms which contain the required information.

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual work assignments, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each work assignment and for the contract total, as well as any supporting data for each work assignment as identified in the instructions.

(2) The invoice or request for contract financing payment shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. For current costs, each major cost element shall include the appropriate supporting schedule identified in the invoice preparation instructions. Cumulative charges represent the net sum of current charges by cost element for the contract period.

(d)(1) The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract.

(d)(2) On a case-by-case basis, when needed to verify the reasonableness of subcontractor costs, the Contracting Officer may require that the contractor obtain from the subcontractor cost information in the detail set forth in (c)(2). This information should be obtained through a means which maintains subcontractor confidentiality (for example, via sealed envelopes), if the subcontractor expresses CBI concerns.

(e) Invoices or requests for contract financing payment must clearly indicate the period of performance for which payment is requested. Separate invoices or requests for contract financing payment are required for charges applicable to the basic contract and each option period.

(f)(1) Notwithstanding the provisions of the clause of this contract at FAR 52.216-7, Allowable Cost and Payment, invoices or requests for contract financing payment shall be submitted once per month unless there has been a demonstrated need and Contracting Officer approval for more frequent billings. When submitted on a monthly basis, the period covered by invoices or requests for contractor financing payments shall be the same as the period for monthly progress reports required under this contract.

(2) If the Contracting Officer allows submissions more frequently than monthly, one submittal each month shall have the same ending period of performance as the monthly progress report.

(3) Where cumulative amounts on the monthly progress report differ from the aggregate amounts claimed in the invoice(s) or request(s) for contract financing payments covering the same period, the contractor shall provide a reconciliation of the difference as part of the payment request.

Alternate I (JUN 1996). If used in a fixed-rate type contract, substitute the following paragraphs (c)(1) and (2) for paragraphs (c)(1) and (2) of the basic clause:

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual delivery orders, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each delivery order and for the contract total, as well as any supporting data for each delivery order as identified in the instructions.

(2) The invoice or request for contract financing payment that employs a fixed rate feature shall include current and cumulative charges by contract labor category and by other major cost elements such as travel, equipment, and other direct costs. For current costs, each cost element shall include the appropriate supporting schedules identified in the invoice preparation instructions.

INVOICE PREPARATION INSTRUCTIONS

SF 1034

The information which a contractor is required to submit in its Standard Form 1034 is set forth as follows:

- (1) **U.S. Department, Bureau, or establishment and location** - insert the names and address of the servicing finance office unless the contract specifically provides otherwise.
- (2) **Date Voucher Prepared** - insert date on which the public voucher is prepared and submitted.
- (3) **Contract/Delivery Order Number and Date** - insert the number and date of the contract and delivery order, if applicable, under which reimbursement is claimed.
- (4) **Requisition Number and Date** - leave blank.
- (5) **Voucher Number** - insert the appropriate serial number of the voucher. A separate series of consecutive numbers, beginning with Number 1, shall be used by the contractor for each new contract. When an original voucher was submitted, but not paid in full because of suspended costs, resubmission vouchers should be submitted in a separate invoice showing the original voucher number and designated with the letter "R" as the last character of the number. If there is more than one resubmission, use the appropriate suffix (R2, R3, etc.)
- (6) **Schedule Number; Paid By; Date Invoice Received** - leave blank.
- (7) **Discount Terms** - enter terms of discount, if applicable.
- (8) **Payee's Account Number** - this space may be used by the contractor to record the account or job number(s) assigned to the contract or may be left blank.
- (9) **Payee's Name and Address** - show the name of the contractor exactly as it appears in the contract and its correct address, except when an assignment has been made by the contractor, or the right to receive payment has been restricted, as in the case of an advance account. When the right to receive payment is restricted, the type of information to be shown in this space shall be furnished by the Contracting Officer.
- (10) **Shipped From; To; Weight Government B/L Number** - insert for supply contracts.

(11) **Date of Delivery or Service** - show the month, day and year, beginning and ending dates of incurrence of costs claimed for reimbursement. Adjustments to costs for prior periods should identify the period applicable to their incurrence, e.g., revised provisional or final indirect cost rates, award fee, etc.

(12) **Articles and Services** - insert the following: "For detail, see Standard Form 1035 total amount claimed transferred from Page ___ of Standard Form 1035." Type "COST REIMBURSABLE-PROVISIONAL PAYMENT" or "INDEFINITE QUANTITY/INDEFINITE DELIVERY-PROVISIONAL PAYMENT" on the Interim public vouchers. Type "COST REIMBURSABLE-COMPLETION VOUCHER" or "INDEFINITE QUANTITY/INDEFINITE DELIVERY-COMPLETION VOUCHER" on the Completion public voucher. Type "COST REIMBURSABLE-FINAL VOUCHER" or "INDEFINITE QUANTITY/INDEFINITE DELIVERY-FINAL VOUCHER" on the Final public voucher. Type the following certification, signed by an authorized official, on the face of the Standard Form 1034.

"I certify that all payments requested are for appropriate purposes and in accordance with the agreements set forth in the contract."

(Name of Official)

(Title)

(13) **Quantity; Unit Price** - insert for supply contracts.

(14) **Amount** - insert the amount claimed for the period indicated in (11) above.

INVOICE PREPARATION INSTRUCTIONS SF 1035

The information which a contractor is required to submit in its Standard Form 1035 is set forth as follows:

- (1) **U.S. Department, Bureau, or Establishment** - insert the name and address of the servicing finance office.
- (2) **Voucher Number** - insert the voucher number as shown on the Standard Form 1034.
- (3) **Schedule Number** - leave blank.
- (4) **Sheet Number** - insert the sheet number if more than one sheet is used in numerical sequence. Use as many sheets as necessary to show the information required.
- (5) **Number and Date of Order** - insert payee's name and address as in the Standard Form 1034.
- (6) **Articles or Services** - insert the contract number as in the Standard Form 1034.

- (7) **Amount** - insert the latest estimated cost, fee (fixed, base, or award, as applicable), total contract value, and amount and type of fee payable (as applicable).
- (8) **A summary of claimed current and cumulative costs and fee by major cost element.** Include the rate(s) at which indirect costs are claimed and indicate the base of each by identifying the line of costs to which each is applied. The rates invoiced should be as specified in the contract or by a rate agreement negotiated by EPA's Cost Policy and Rate Negotiation Branch.
- (9) The **fee** shall be determined in accordance with instructions appearing in the contract.

NOTE: Amounts claimed on vouchers must be based on records maintained by the contractor to show by major cost element the amounts claimed for reimbursement for each applicable contract. The records must be maintained based on the contractor's fiscal year and should include reconciliations of any differences between the costs incurred per books and amounts claimed for reimbursement. A memorandum record reconciling the total indirect cost(s) claimed should also be maintained.

SUPPORTING SCHEDULES FOR COST REIMBURSEMENT CONTRACTS

The following backup information is required as an attachment to the invoice as shown by category of cost:

Direct Labor - identify the number of hours (by contractor labor category and total) and the total loaded direct labor hours billed for the period in the invoice.

Indirect Cost Rates - identify by cost center, the indirect cost rate, the period, and the cost base to which it is applied.

Subcontracts - identify the major cost elements for each subcontract.

Other Direct Costs - when the cost for an individual cost (e.g., photocopying, material and supplies, telephone usage) exceeds \$1,000 per the invoice period, provide a detailed explanation for that cost category.

Contractor Acquired Equipment (if authorized by the contract) - identify by item the quantities, unit prices, and total dollars billed.

Contractor Acquired Software (if authorized by the contract) - identify by item the quantities, unit prices, and total dollars billed.

Travel - when travel costs exceed \$2,000 per invoice period, identify by trip, the number of travelers, the duration of travel, the point of origin, destination, purpose of trip, transportation by unit price, per diem rates on daily basis and total dollars billed. Detailed reporting is not required for local travel.

The manner of breakdown, e.g., work assignment/delivery order basis with/without separate program management, contract period will be specified in the contract instructions.

NOTE: Any costs requiring advance consent by the Contracting Officer will be considered improper and will be suspended, if claimed prior to receipt of Contracting Officer consent. Include the total cost claimed for the current and cumulative-to-date periods. After the total amount claimed, provide summary dollar amounts of cumulative costs: (1) suspended as of the date of the invoice; and (2) disallowed on the contract as of the date of the invoice. The amount under (2) shall include costs originally suspended and later disallowed. Also include an explanation of the changes in cumulative costs suspended or disallowed by addressing each adjustment in terms of: voucher number, date, dollar amount, source, and reason for the adjustment. Disallowed costs should be identified in unallowable accounts in the contractor's accounting system.

SUPPORTING SCHEDULES FOR FIXED-RATE CONTRACTS

The following backup information is required as an attachment to the invoice as shown by category of cost:

Direct Labor - identify the number of hours (by contractor labor category and total) and the total direct labor hours billed for the period of the invoice.

Subcontracts - identify the major cost elements for each subcontract.

Other Direct Costs - when the cost for an individual cost (e.g., photocopying, material and supplies, telephone usage) exceeds \$1,000 per the invoice period, provide a detailed explanation for that cost category

Indirect Cost Rates - identify by cost center, the indirect cost rate, the period, and the cost base to which it is applied.

Contractor Acquired Equipment - identify by item the quantities, unit prices, and total dollars billed.

Contractor Acquired Software - identify by item the quantities, unit prices, and total dollars billed.

Travel - when travel costs exceed \$2,000 per invoice period, identify by trip, the number of travelers, the duration of travel, the point of origin, destination, purpose of trip, transportation by unit price, per diem rates on daily basis and total dollars billed. Detailed reporting is not required for local travel.

The manner of breakdown, e.g., work assignment/delivery order basis with/without separate program management, contract period will be specified in the contract instructions.

NOTE: Any costs requiring advance consent by the Contracting Officer will be considered improper and will be suspended, if claimed prior to receipt of Contracting Officer consent.

Include the total cost claimed for the current and cumulative-to-date periods. After the total amount claimed, provide summary dollar amounts of cumulative costs: (1) suspended as of the date of the invoice; and (2) disallowed on the contract as of the date of the invoice. The amount under (2) shall include costs originally suspended and later disallowed. Also include an explanation of the changes in cumulative costs suspended or disallowed by addressing each adjustment in terms of: voucher number, date, dollar amount, source, and reason for the adjustment. Disallowed costs should be identified in unallowable accounts in the contractor's accounting system.

RESUBMISSIONS

When an original voucher was submitted, but not paid in full because of suspended costs and after receipt of a letter of removal of suspension, resubmissions of any previously claimed amounts which were suspended should be submitted in a separate invoice showing the original voucher number and designated with the letter "R" with the copy of the removal of suspension notice. The amounts should be shown under the appropriate cost category and include all appropriate supplemental schedules. NOTE: All disallowances must be identified as such in the accounting system through journal entries.

Voucher re-submittals may also occur as a result of: (1) a new indirect cost rate agreement; or (2) adjustments to previously billed direct cost rates due to audit resolution. Such claims should be submitted in a separate invoice or request for contractor financing payment number. They should include supplemental schedules showing the previously adjusted amounts by contract period. If the resubmission is based on a new rate agreement, a copy of the agreement should be attached. Costs must be identified by delivery order or work assignment where appropriate. If the contract is Superfund-related, voucher re-submittals shall also identify the amount claimed against each Superfund site and non-site-specific activity.

COMPLETION VOUCHERS

Submit a completion voucher when all performance provisions of the contract are physically complete, when the final report (if required) is accepted, and when all direct costs have been incurred and booked. Indirect costs may be claimed at the provisional rates, if final rates are not yet available. Contractors must identify these vouchers by typing "Completion Voucher" next to the voucher number. For contracts separately invoiced by delivery order, provide a schedule showing total costs claimed by delivery order and in total for the contract.

In addition to the completion voucher, the contractor must submit an original and two copies of EPA Form 1900-10, Contractor's Cumulative Claim and Reconciliation showing the total cumulative costs claimed under the contract.

The information which a contractor is required to submit in its EPA Form 1900-10 is set forth as follows:

- (1) **Contractor's Name and Address** - show the name of the contractor exactly as it appears in the contract and its correct address, except when an assignment has been made by the contractor, or the right to receive payment has been restricted, as in the case of an advance account. When the right to receive payment is restricted, the type of information to be shown in this space shall be furnished by the Contracting Officer.

- (2) **Contract Number** - insert the number of the contract under which reimbursement is claimed.
- (3) First voucher number and completion voucher number.
- (4) Total amount of cost claimed for each cost element category through the completion voucher.
- (5) Total Fee awarded.
- (6) Amount of indirect costs calculated using negotiated final indirect cost rate(s) and/or provisional rate(s) as specified in the contract, if final rate(s) are not yet negotiated for any fiscal period.
- (7) Fiscal year.
- (8) Indirect cost center.
- (9) Appropriate basis for allocation.
- (10) Negotiated final indirect cost rate(s) or provisional indirect cost rate(s).
- (11) Signature.
- (12) Official title.
- (13) Date.

FINAL VOUCHER AND CLOSING DOCUMENTS

After completion of the final audit and all suspensions and/or audit exceptions have been resolved as to the final allowable costs and fee, including establishment of final indirect cost rate(s) for all periods the contractor shall prepare a final voucher including any adjustments to vouchered costs necessitated by the final settlement of the contract price. Contractors must identify these vouchers by typing "Final Voucher" next to the voucher number. For contracts separately invoiced by delivery order, provide a schedule showing final total costs claimed by delivery order and in total for the contract. The contractor shall also provide an original and two copies of an updated EPA Form 1900-10, Contractors Cumulative Claim and Reconciliation, showing the total negotiated, cumulative costs for the contract. Indirect costs shall be included at the final negotiated rates.

In addition to the final voucher, the contractor must submit an original and two copies of the Contractor's Release; Assignee's Release, if applicable; the Contractor's Assignment of Refunds, Rebates, Credits and other Amounts; the Assignee's Assignment of Refunds, Rebates, Credits and other Amounts, if applicable; and the Contractor's Affidavit of Waiver of Lien, when required by the contract.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Class Deviation from Clause [1552.216-73](#), *Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract (Apr 1984)*

FINDINGS

1. The current Environmental Protection Agency Acquisition Regulation (EPAAR) clause [1552.216-73](#), *Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract (Apr 1984)*, states that contractors will be paid for the life of an order at the rates in effect when the order was issued, even if performance under the order crosses into another period of performance. This requirement was equitable and in the Government's interests in the 1980s and 1990s when orders were typically written for periods of performance of one year or less, and the intent of the language was to pay the same rate for any work that may have slipped into the contract's subsequent period of performance.
2. The current EPAAR [1552.216-73](#) appears to monetarily benefit the Government because it states that the contractor will be paid the same rates even if performance crosses into another period, as opposed to the contractor typically being paid an increased rate that is escalated by a small annual percentage amount to keep up with the cost of living. The monetary amount in question though is usually small, because most of the performance has already been completed in the previous period of performance, so there is not a lot of work to do in the subsequent period.
3. In the 2000s and 2010s the Government began placing more orders of longer duration, that cross periods of performance, in part because of the savings realized in the economies of scale from long-term planning and execution of critical mission functions. As a result, the Office of Acquisition Management (OAM) is writing more orders of longer length.
4. For orders longer than one year, it may be equitable for both parties, and in the Government's interest, for contractors to be paid at rates that are effective at the time of performance, and not at rates in effect at the time of order issuance (as the clause currently states). While there may be slight monetary benefit to the Government by paying the contractor unchanged rates, performance risk would increase because the contractor may not have the financial ability to satisfactorily execute the contract if paid unescalated rates. Bid risk to EPA would also increase if contractors stopped offering on EPA work because OAM does not pay wage escalations for orders longer than one year.
5. Further, the current EPAAR [1552.216-73](#) references only Delivery Orders as the clause ordering mechanism, which is too restrictive in 2018 when contracting officers place more Task Orders (for services) than Delivery Orders (for supplies). Therefore, there is a need for a deviation to take a broader approach and reference simply "orders;" in that way, the deviation can be used for procurements that issue task orders for services, as well as delivery orders for supplies.

DETERMINATION

1. Under the authority of Federal Acquisition Regulation ([FAR](#)) [Subpart 1.4](#) and Environmental Protection Agency Acquisition Regulation ([EPAAR](#)) [Subpart 1501.4](#), and based upon the above

findings, I grant a class deviation from the current EPAAR clause 1552.216-73, *Fixed Rates for Services—Indefinite Delivery/ Indefinite Quantity Contract (Apr 1984)*.

2. Contracting officers may use the deviated EPAAR clause, 1552.216-73 (DEVIATION), (instead of the undeviated clause) for procurements that will have order performance periods longer than one year. Contracting officers must continue to use the undeviated clause as prescribed for procurements that will have orders with performance periods of one year or less.
3. Contracting officers must use the deviated and/or undeviated clause as prescribed, and are prohibited from creating custom language outside of the clause in order to circumvent clause usage.
4. Contracting officers may use both the deviated and undeviated clauses for procurements that will have orders of different lengths, where some may be one year or less, and others may be longer than one year. Contracting officers in this case should include procurement language that the deviated clause applies to orders longer than one year, and the undeviated clause applies to orders less than one year.
5. This deviation is effective at the date of signature below, and shall remain in effect until it is incorporated into the EPAAR or is otherwise rescinded.

/signed/

Kimberly Y. Patrick, Director
Office of Acquisition Management

____13 April 2018_____
Date

Attachment – EPAAR Deviation Text**1552.216-73 Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract (DEVIATION)(APR 2018)**

Prescription: The contracting officer shall insert the following clause deviation to specify fixed rates for services in indefinite delivery/indefinite quantity contracts when orders will be issued with a performance period of longer than one year. When the order contains option periods, the clause should be modified to reflect the information and data for the base period and any option periods.

FIXED RATES FOR SERVICES— INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT (DEVIATION)(APR 2018)

The following fixed rates shall apply for payment purposes for the duration of the contract.

Personnel classification	Skill level	Fixed hourly rate

The rate, or rates, set forth above cover all expenses, including report preparation, salaries, overhead, general and administrative expenses, and profit.

The Contractor shall voucher for only the time of the personnel whose services are applied directly to the work called for in individual Orders and accepted by the EPA Contracting Officer's Representative (COR). The Government shall pay the Contractor at rates in effect when the work is performed by the Contractor. The Contractor shall maintain time and labor distribution records for all employees who work under the contract. These records must document time worked and work performed by each individual on all Orders.

(End of clause)

(b) FAR Deviations.**U.S. ENVIRONMENTAL PROTECTION AGENCY****FAR CLASS DEVIATION****WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES****FINDINGS**

1. Federal Acquisition Regulation (FAR) Case 2013-015 amended FAR 3.908 to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees. The pilot program took effect on July 1, 2013 and was effective through January 1, 2017.

The four-year pilot program was made permanent under 41 U.S.C. 4712 (as amended by Public Law 114-261). The FAR councils are in the process of developing new FAR Case 2017-005 to implement this change in the FAR.

Since FAR Case 2017-005 is not final and amending the FAR is a lengthy process, the Chairman of the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2017-02, *Class Deviation from the FAR to implement an Act to Enhance Whistleblower Protection for Employees*, authorizing agencies to deviate from the FAR until the FAR has officially been amended to incorporate the pilot program as permanent.

2. Consequently, this Determination and Findings implements Public Law 114-261 by authorizing a deviation to FAR 3.900(a)&(b), 3.908-9, 52.212-4(r), 52.212-5(b), and 52.3.

3. Agencies were given the authorization to issue a class deviation, in accordance with FAR 1.404, under CAAC Letter 2017-02. The CAAC Letter also constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1).

DETERMINATION

1. Under the authority of FAR 1.404 and based upon the above findings, I grant a class deviation to FAR 3.900(a)&(b), 3.908-9, 52.212-4(r), 52.212-5(b), and 52.3 as detailed in the attached FAR deviation text. The deviations to the FAR text, attached hereto, are taken directly from CAAC Letter 2017-02.

2. This deviation is effective at the date of signature below, and shall remain in effect until incorporated into the FAR, superseded, or is otherwise rescinded.

/S/

December 1, 2017

Kimberly Y. Patrick, Director
Office of Acquisition Management

Date

Attachment
FAR DEVIATION TEXT

Deviations are shown in red.

1. FAR 3.900 is revised to show that paragraph (a) is not in effect, and that paragraph (b) is in effect as follows:

FAR Subpart 3.9—Whistleblower Protections for Contractor Employees

FAR 3.900 Scope of subpart. (DEVIATION 2017-02)

This subpart implements various statutory whistleblower programs. This subpart does not implement 10 U.S.C. 2409, which is applicable only to DoD, NASA, and the Coast Guard.

(a) 41 U.S.C. 4705 (in effect before July 1, 2013). Sections 3.901 through 3.906 of this subpart implement 41 U.S.C. 4705, applicable to civilian agencies other than NASA and the Coast Guard.

(b) 41 U.S.C. 4712 (in effect on and after July 1, 2013). Section 3.908 of this subpart implements the pilot program, applicable to civilian agencies other than NASA and the Coast Guard, except as provided in paragraph (d) of this section.

(c) Section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), implemented in 3.909, applicable to all agencies.

(d) Contracts funded by the American Recovery and Reinvestment Act. Section 3.907 of this subpart implements section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and applies to all contracts funded in whole or in part by that Act.

* * * * *

2. FAR 3.908-9 is revised to clarify the use of clause 52.203-17 as follows:

FAR 3.908 Pilot program for enhancement of contractor employee whistleblower protections.

* * * * *

FAR 3.908-9 Contract clause. (DEVIATION 2017-02)

The contracting officer shall insert the clause at 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts that exceed the simplified acquisition threshold, for both commercial items and for other than commercial items.

* * * * *

3. FAR 52.212-4(r) is revised to remove the whistleblower protections at 41 USC 4712 as follows:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

FAR 52.212-4 Contract Terms and Conditions—Commercial Items (DEVIATION 2017-02).

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (DEVIATION 2017-02) (JUNE 2017)

* * * * *

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

* * * * *

4. FAR 52.212-5 is revised to add clause 52.203-17 to paragraph (b) as follows:

FAR 52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DEVIATION 2017-02).

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DEVIATION 2017-02) (JUNE 2017)

* * * * *

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
[Contracting Officer check as appropriate.]

___ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

___ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509)).

___ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

___ (4) 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (April 2014) (41 U.S.C. 4712) relating to whistleblower protections).

The paragraphs below are renumbered.

* * * * *

5. FAR 52.3, Provision and Clause Matrix, is revised to change the use of clause 52.203-17 to “A” (required when applicable) in the Commercial Items (CI) column as follows:

FAR Subpart 52.3—Provision and Clause Matrix (DEVIATION 2017-02).

PROVISION OR CLAUSE	PRESCRIBED IN	(columns not shown) * * *	CI
52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.	3.908-9		A

* * * * *

U.S. ENVIRONMENTAL PROTECTION AGENCY

FAR CLASS DEVIATION

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2018

FINDINGS

1. The National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) (Public Law 115-

91), Sections 806 and 805 respectively, increased the micro-purchase threshold to \$10,000 and the simplified acquisition threshold to \$250,000. Additionally, Section 217(b) of the NDAA FY 2017 (Public Law 114-328) changed a portion of the MPT definition in FAR 2.101 to increase the MPT for acquisitions from institutions of higher education or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes, to \$10,000.

FAR Case 2018-004 has been opened to implement the appropriate statutory changes in the FAR. However, EPA desires to use the increased thresholds prior to publication of the FAR changes.

Since FAR Case 2018-004 is not final and amending the FAR is a lengthy process, the Chairman of the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2018-02 Class Deviation from the FAR to implement increasing the micro-purchase threshold and the simplified acquisition threshold. CAAC Letter 2018-02 authorizes agencies to deviate from the FAR until the FAR has officially been amended to incorporate the change in the MPT and SAT.

2. Consequently, this Determination and Findings implements Public Law 115-91 and Public Law 114-328 by authorizing a deviation to FAR text provided in CAAC Letter 2018-02.

3. Agencies were given the authorization to issue a class deviation, in accordance with FAR 1.404, under CAAC Letter 2018-02. The CAAC Letter also constitutes consultation with the Chair of the CAAC as required by FAR 1.404(a)(1).

DETERMINATION

1. Under the authority of FAR 1.404 and based upon the above findings, I grant a class deviation to

FAR in accordance with the Deviation Text attached hereto. The Deviation Text is taken directly from language contained in Attachment A of CAAC Letter 2018-02.

2. This deviation is effective at the date of signature below, and shall remain in effect until incorporated into the FAR, superseded, or is otherwise rescinded.

/Signed/

April 20, 2018

Kimberly Y. Patrick, Director
Office of Acquisition Management

Date

Attachment A
FAR DEVIATION TEXT
FAR CLASS DEVIATION
NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2018
Increase Micro-Purchase and Simplified Acquisition Thresholds

The baseline for the following is Federal Acquisition Circular (FAC) 2005-97, effective January 24, 2018.

* * * * *

2.101 Definitions.

* * * * *

(b) * * *

“Micro-purchase threshold” means \$10,000, except it means—

(1) For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(2) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500; and

(3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122), as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903)—

(i) \$20,000 in the case of any contract to be awarded and

performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States. [; and]

(4) For acquisitions of supplies or services from institutions of higher education (20 U.S.C. 1001(a)) or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes—

(i) \$10,000; or

(ii) A higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or State law.

“Simplified acquisition threshold” means \$250,000 (41 U.S.C. 134), except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122), (41 U.S.C. 1903), the term means—

(i) \$750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means \$500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

13.003 Policy.

* * * (b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding \$10,000 (\$20,000 for acquisitions as described in 13.201(g)(1)) but not exceeding \$250,000 (\$750,000 for acquisitions described in paragraph (1)(i) of the simplified acquisition threshold definition at 2.101) are reserved exclusively for small business concerns and shall be set aside (see 19.000, 19.203, and subpart 19.5). * * * * *

13.501 Special documentation requirements.

(a) * * * (2) * * *

(i) For a proposed contract exceeding \$250,000, but not exceeding \$700,000, the contracting officer’s certification that the justification is accurate and complete to the best of the contracting officer’s knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures. * * * * *

19.203 Relationship among small business programs.

* * * (b) At or below the simplified acquisition threshold. For acquisitions of supplies or services that have an anticipated dollar value exceeding \$10,000 (\$20,000 for acquisitions as described in

13.201(g)(1)), but not exceeding \$250,000 (\$750,000 for acquisitions described in paragraph (1)(i) of the simplified acquisition threshold definition at 2.101), the requirement at 19.502-2(a) to exclusively reserve acquisitions for small business concerns does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.

* * * * *

19.502-1 Requirements for setting aside acquisitions.

* * *

(b) This requirement does not apply to purchases of \$10,000 or less (\$20,000 or less for acquisitions as described in 13.201(g)(1)), or purchases from required sources of supply under Part 8 (e.g., Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502-2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to 19.203(b). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$10,000 (\$20,000 for acquisitions as described in 13.201(g)(1)), but not over \$250,000 (\$750,000 for acquisitions described in paragraph (1) (i) of the simplified acquisition threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract as described in 19.203.

(b) Before setting aside an acquisition under this paragraph, refer to 19.203(c). The contracting officer shall set aside any acquisition over \$250,000 for small business participation when there is a reasonable expectation that— * * * * *

19.508 Solicitation provisions and contract clauses.

* * * (e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside or reserved for small business and the contract amount is expected to exceed \$250,000. This includes multiple-award contracts when orders may be set aside for small business concerns, as described in 8.405-5 and 16.505(b)(2)(i)(F).

52.203-16 Preventing Personal Conflicts of Interest.

* * * (d) Subcontract flowdown. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts—

(1) That exceed \$250,000; and * * *

52.212-1 Instructions to Offerors—Commercial Items.

* * * (j) *Unique entity identifier*. (Applies to all offers exceeding \$10,000, and offers at any dollar level if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) * * * * *

52.219-9 Small Business Subcontracting Plan.

* * * (d) * * * (11) * * *

(iii) Records on each subcontract solicitation resulting in an award of more than \$250,000, indicating— * * *

52.219-9 Small Business Subcontracting Plan.

Alternate IV

* * * (d) * * * (11) * * * (iii) Records on each subcontract solicitation resulting in an award of more than \$250,000, indicating—

1. This class deviation from the Federal Acquisition Regulation (FAR) provides flexibilities for Officials who need to notify contractors of proposed debarment or suspension/debarment decisions.

2. FAR 9.406-3 and FAR 9.407-3 currently require contractors to be notified of a suspension, proposed debarment, or debarment action from EPA's Suspension and Debarment Official (SDO) via certified mail, return receipt requested. Unfortunately, as written the FAR precludes any other type of notification such as an electronic means of notification that may be beneficial during times of emergency or crisis such as those presented by the Coronavirus Disease 2019 (COVID-19) pandemic.

3. This class deviation will allow greater flexibility for Debarring Officials by providing a means of electronic delivery of notices to contractors in addition to certified mail, return receipt requested as required under FAR 9.406-3 and FAR 9.407-3, and allow for greater flexibility in allowing contractors to make presentations via telephone or internet. This deviation applies to EPA Acquisition Regulation (EPAAR) 1509.406-3 and 1509.407 and EPA Acquisition Guide (EPAAG) 9.4 though they are silent on the notification means to contractors being suspended, proposed for debarment, or debarred. The areas of the FAR that are being amended by this class deviation are: FAR 9.406-3(b)(1), (c) and (e); FAR 9.407-3(b)(1), (c) and (d)(4).

4. Executive agencies were given the authorization to issue a class deviation, in accordance with FAR 1.404, under Civilian Agency Acquisition Council (CAAC) Letter 2020-01. The CAAC Letter also constitutes consultation with the Chair of the CAAC as required by FAR 1.404(a)(1).

1. Under the authority of FAR 1.404 and based upon the above findings, I grant a class deviation to FAR 9.406-3(b)(1), (c) and (e) & FAR 9.407-3(b)(1), (c) & (d)(4) as detailed in the attached FAR deviation text. The FAR text deviations are taken directly from CAAC Letter 2020-01.

2. This deviation is effective at the date of signature below, and shall remain in effect until incorporated into the FAR, superseded, or is otherwise rescinded.

4/2/2020
Date

Attachments: FAR Deviation Text
CAAC Letter 2020-01

Attachment**FAR DEVIATION TEXT**

* * * * *

Subpart 9.4 - Debarment, Suspension, and Ineligibility

* * * * *

9.406 Debarment.

* * *

9.406-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decision making process.*

(1) Agencies shall establish procedures governing the debarment decision making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. The debarring official may use flexible procedures to allow a contractor to present matters in opposition via telephone or internet. If so, the debarring official should change the notice in paragraph (c)(3)(iv) of this section to include those flexible procedures.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official to the contractor and any specifically named affiliates.

(1) The notice shall be sent by—

- (i) Certified mail, return receipt requested; or
- (ii) Written notice by a means reasonably calculated to reach the recipient at the last known street address, facsimile number, or e-mail address (with a request for a read receipt).

(2) The notice shall be sent—

- (i) To the contractor, the contractor's identified counsel, and (if known) the contractor's agent for service of process; and
- (ii) For each specifically named affiliate, to the affiliate itself, the affiliate's identified counsel, and (if known) the affiliate's agent for service if process.

(3) The notice shall state--

- (i) That debarment is being considered;
- (ii) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
- (iii) Of the cause(s) relied upon under 9.406-2 for proposing debarment;
- (iv) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- (v) Of the agency's procedures governing debarment decision making;
- (vi) Of the effect of the issuance of the notice of proposed debarment; and

* * *

(e) *Notice of debarring official's decision.*

(1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by means of delivery set forth in 9.406-3(c) —

- (i) Referring to the notice of proposed debarment;
- (ii) Specifying the reasons for debarment;
- (iii) Stating the period of debarment, including effective dates; and
- (iv) Advising that the debarment is effective throughout the executive branch

of the Government unless the head of an agency or a designee makes the statement called for by 9.406-1 (c).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by means of delivery set forth in 9.406-3(c).

* * *

9.407 Suspension.

* * *

9.407-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decision making process.*

(1) Agencies shall establish procedures governing the suspension decision making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. The suspending official may use the flexible procedures in 9.406-3(b)(1). If so, the suspending official should change the notice in paragraph (c)(5) of this section to include those flexible procedures.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by means of delivery set forth in 9.406-3(c) —

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities—

- (i) Of a serious nature in business dealings with the Government or
- (ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government’s evidence;
- (2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;
- (3) Of the cause(s) relied upon under 9.407-2 for imposing suspension;
- (4) Of the effect of the suspension;
- (5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and
- (6) That additional proceedings to determine disputed material facts will be conducted unless—
 - (i) The action is based on an indictment; or
 - (ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.
- (d) *Suspending official’s decision.*

* * *

- (4) Prompt written notice of the suspending official’s decision shall be sent to the contractor and any affiliates involved, by means of delivery set forth in 9.406-3(c).

* * *

* * * * *

U.S. ENVIRONMENTAL PROTECTION AGENCY
FEDERAL ACQUISITION REGULATION CLASS DEVIATION
ACCELERATED PAYMENTS TO SMALL BUSINESS
CONTRACTORS AND SUBCONTRACTORS
AND INCREASED CUSTOMARY PROGRESS PAYMENT RATES

FINDINGS

1. To further support small businesses and the U.S. economy during the Coronavirus Disease 2019 (COVID 19) pandemic, this class deviation from the Federal Acquisition Regulation (FAR) implements section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92) by accelerating payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors.

2. FAR Case 2020-007, *Accelerated Payments Applicable to Contracts with Certain Small Business Concerns*, when completed will amend the FAR to implement this change. Pending the FAR amendment, the Civilian Agency Acquisition Council (CAAC) Chairman has issued CAAC Letter 2020-02 authorizing agencies to deviate from the FAR.

3. In addition, CAAC Letter 2020-03 was issued authorizing agencies to deviate from FAR 32.501-1(a), clause 52.232-16, *Progress Payments*, and Alternate I increasing the customary progress payment rates based on costs from 80 percent to 90 percent for large business concerns, and from 85 percent to 95 percent for small business concerns. Adjustments on liquidations are not required for previously delivered items; financing limitations will be accomplished through Section III of the Standard Form 1443.

3. Executive agencies are given the authorization to issue a class deviation, in accordance with FAR 1.404, under Civilian Agency Acquisition Council (CAAC) Letters 2020-02 and 2020-03. The CAAC Letters also constitute consultation with the Chair of the CAAC as required by FAR 1.404(a)(1).

DETERMINATION

1. Under the authority of FAR 1.404 and based upon the above findings, I grant a class deviation to FAR 32.009, 32.009-1, 32.501-1(a), 32.903(a), 32.906(a), 52.212-5(b), 52.213-4(a), 52.232-16, Alternate I, 52.232-40(a), and 52.244-6(c) as detailed in the attached FAR deviation text. The FAR text deviation is taken directly from CAAC Letters 2020-02 and 2020-03.

2. This deviation is effective at the date of signature below, and shall remain in effect until incorporated into the FAR, superseded, or is otherwise rescinded.

/ S /

Kimberly Y. Patrick, Director
Office of Acquisition Solutions

5/28/2020

Date

Attachments:

FAR Deviation Text

CAAC Letters 2020-02 and 2020-03 - <https://www.acquisition.gov/content/caac-letters>

ATTACHMENT

FAR DEVIATION TEXT

* * * * *

PART 32—CONTRACT FINANCING

* * * * *

32.009 Providing accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern subcontractors.

32.009-1 General.

(a) Pursuant to 31 U.S.C. 3903(a) and 10 U.S.C. 2307(a), agencies shall provide accelerated payments, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice and all other required documentation, if a specific payment date is not established by contract, to—

- 1) Small business contractors, and
- 2) Prime contractors that subcontract with a small business concern, if the prime contractor agrees to make payments to the small business subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

Pursuant to the policy provided by OMB Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors (and as extended by OMB Memoranda M-13-15 and M-14-10, both titled Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors), agencies shall take measures to ensure that prime contractors pay small business subcontractors on an accelerated timetable to the maximum extent practicable, and upon receipt of accelerated payments from the Government. This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

(b) This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

32.009-2 Contract clause.

Insert clause 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, in all solicitations and contracts.

* * * * *

SUBPART 32.5 – PROGRESS PAYMENTS BASED ON COSTS

* * * * *

32.501-1 Customary progress payment rates. (DEVIATION APR 2020)

(a) The customary progress payment rate is **90** percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is **95** percent.

(b) The contracting officer must-

(1) Consider any rate higher than those permitted in paragraph (a) of this section an unusual progress payment; and

(2) Not include a higher rate in a contract unless advance agency approval is obtained as prescribed in [32.501-2](#).

(c) When advance payments and progress payments are authorized under the same contract, the contracting officer must not authorize a progress payment rate higher than the customary rate.

(d) In accordance with [10 U.S.C.2307\(e\)\(2\)](#) and [41 U.S.C.4504\(b\)](#), the limit for progress payments is 80 percent on work accomplished under undefinitized contract actions. The contracting officer must not authorize a higher rate under unusual progress payments or other customary progress payments for the undefinitized actions.

* * * * *

SUBPART 32.9—PROMPT PAYMENT

* * * * *

32.903 Responsibilities. (DEVIATION APR 2020)

(a) * * *

(5) May authorize the use of the accelerated payment methods specified at 5 CFR 1315.5 (but see 32.009-1(a)).

* * * * *

32.906 Making payments. (DEVIATION APR 2020)

(a) * * *

(2) That the use of accelerated payment methods are necessary (see 32.903(a)(5)) (but see 32.009-1(a)).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

Subpart 52.2—Text of Provisions and Clauses

* * * * *

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEM (MAR 2020) (DEVIATION APR 2020)

As prescribed in 12.301(b)(4), insert the following clause:

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

___ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

___ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509)).

___ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

___ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) (Pub. L. 109-282) (31 U.S.C. 6101 note).

___ (5) [Reserved].

___ (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

___ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

___ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101note).

___ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

___ (10) [Reserved].

___ (11)

(i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Mar 2020) (15 U.S.C.657a).

___ (ii) Alternate I (Mar 2020) of 52.219-3.

___ (12)

(i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Mar 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

___ (ii) Alternate I (Mar 2020) of 52.219-4.

___ (13) [Reserved]

___ (14)

(i) 52.219-6, Notice of Total Small Business Set-Aside (Mar 2020) (15 U.S.C.644).

___ (ii) Alternate I (Mar 2020).

___ (iii) Alternate II (Nov 2011).

___ (15)

(i) 52.219-7, Notice of Partial Small Business Set-Aside (Mar 2020) (15 U.S.C. 644).

___ (ii) Alternate I (Mar 2020) of 52.219-7.

___ (iii) Alternate II (Mar 2004) of 52.219-7.

___ (16) 52.219-8, Utilization of Small Business Concerns (Oct 2018)
(15 U.S.C. 637(d)(2) and (3)).

___ (17)

(i) 52.219-9, Small Business Subcontracting Plan (Mar 2020) (15 U.S.C. 637(d)(4)).

___ (ii) Alternate I (Nov 2016) of 52.219-9.

___ (iii) Alternate II (Nov 2016) of 52.219-9.

___ (iv) Alternate III (Mar 2020) of 52.219-9.

___ (v) Alternate IV (Aug 2018) of 52.219-9

___ (18) 52.219-13, Notice of Set-Aside of Orders (Mar 2020) (15 U.S.C. 644(r)).

___ (19) 52.219-14, Limitations on Subcontracting (Mar 2020) (15 U.S.C.637(a)(14)).

___ (20) 52.219-16, Liquidated Damages-Subcontracting Plan (Jan 1999)
(15 U.S.C. 637(d)(4)(F)(i)).

___ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside
(Mar 2020) (15 U.S.C. 657f).

___ (22)

(i) 52.219-28, Post Award Small Business Program Rerepresentation (Mar 2020)
(15 U.S.C. 632(a)(2)).

(ii) Alternate I (MAR 2020) of 52.219-28.

___ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically
Disadvantaged Women-Owned Small Business Concerns (Mar 2020) (15 U.S.C. 637(m)).

___ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned
Small Business Concerns Eligible Under the Women-Owned Small Business Program
(Mar 2020) (15 U.S.C. 637(m)).

(25) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) (15 U.S.C. 644(r)).

(26) 52.219-33, Nonmanufacturer Rule (Mar 2020) (15 U.S.C. 637(a)(17)).

__ (27) 52.222-3, Convict Labor (June 2003) (E.O.11755).

__ (28) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2020) (E.O.13126).

__ (29) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

__ (30)

(i) 52.222-26, Equal Opportunity (Sept 2016) (E.O.11246).

__ (ii) Alternate I (Feb 1999) of 52.222-26.

__ (31)

(i) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).

__ (ii) Alternate I (July 2014) of 52.222-35.

__ (32)

(i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).

__ (ii) Alternate I (July 2014) of 52.222-36.

__ (33) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

__ (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

__ (35)

(i) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).

__ (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter78 and E.O. 13627).

__ (36) 52.222-54, Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

__ (37)

(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

___ (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).

___ (40)

(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

___ (ii) Alternate I (Oct 2015) of 52.223-13.

___ (41)

(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

___ (ii) Alternate I (Jun 2014) of 52.223-14.

___ (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

___ (43)

(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

___ (ii) Alternate I (Jun 2014) of 52.223-16.

___ (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

___ (45) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

___ (46) 52.223-21, Foams (Jun 2016) (E.O. 13693).

___ (47)

(i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a).

___ (ii) Alternate I (Jan 2017) of 52.224-3.

___ (48) 52.225-1, Buy American-Supplies (May 2014) (41 U.S.C. chapter 83).

___ (49)

(i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note,

19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

- ___ (ii) Alternate I (May 2014) of 52.225-3.
- ___ (iii) Alternate II (May 2014) of 52.225-3.
- ___ (iv) Alternate III (May 2014) of 52.225-3.
- ___ (50) 52.225-5, Trade Agreements (Oct 2019) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- ___ (51) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- ___ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- ___ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- ___ (55) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C.4505, 10 U.S.C.2307(f)).
- ___ (56) 52.232-30, Installment Payments for Commercial Items (Jan 2017) (41 U.S.C.4505, 10 U.S.C.2307(f)).
- ___ (57) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct 2018) (31 U.S.C. 3332).
- ___ (58) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C.3332).
- ___ (59) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C.3332).
- ___ (60) **52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) (DEVIATION APR 2020) (31 U.S.C. 3903 and 10 U.S.C. 2307).**
- ___ (61) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).
- ___ (62) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13)).
- ___ (63)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).
- ___ (ii) Alternate I (Apr 2003) of 52.247-64.
- ___ (iii) Alternate II (Feb 2006) of 52.247-64.
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this

contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

- ___ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).
- ___ (2) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).
- ___ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- ___ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- ___ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- ___ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
- ___ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).
- ___ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
- ___ (9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).
- ___ (10) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C.637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sept 2015) (E.O.11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C.4212).

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C.793).

(xi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C.4212)

(xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

(xiv)

(A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (Mar 2015) of 52.222-50(22 U.S.C. chapter 78and E.O 13627).

(xv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

(xvi) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).

(xvii) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).

(xviii) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).

(xix) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).

(xx)

(A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

(xxi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxiii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx.1241(b) and 10 U.S.C.2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

* * * * *

52.213-4 Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS (JAN 2020) (DEVIATION APR 2020))

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (*Jan 2017*) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(ii) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iii) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(iv) [52.222-3](#), Convict Labor (*Jun 2003*) (E.O.11755).

(v) [52.222-21](#), Prohibition of Segregated Facilities (*Apr 2015*).

(vi) [52.222-26](#), Equal Opportunity (*Sept 2016*) (E.O.11246).

(vii) [52.225-13](#), Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(viii) [52.233-3](#), Protest After Award (*Aug 1996*) ([31 U.S.C.3553](#)).

(ix) [52.233-4](#), Applicable Law for Breach of Contract Claim (*Oct 2004*) (Pub.L.108-77, 108-78 ([19 U.S.C. 3805 note](#))).

(2) Listed below are additional clauses that apply:

(i) [52.232-1](#), Payments (*Apr 1984*).

(ii) [52.232-8](#), Discounts for Prompt Payment (*Feb 2002*).

(iii) [52.232-11](#), Extras (*Apr 1984*).

(iv) [52.232-25](#), Prompt Payment (*Jan 2017*).

(v) [52.232-39](#), Unenforceability of Unauthorized Obligations (*Jun 2013*).

(vi) **52.232-40, Providing Accelerated Payments to Small Business Subcontractors**

(DEC 2013) (DEVIATION APR 2020) (31 U.S.C. 3903 and 10 U.S.C. 2307).

(vii) [52.233-1](#), Disputes (*May* 2014).

(viii) [52.244-6](#), Subcontracts for Commercial Items (*Aug* 2019).

(viii) **52.244-6, Subcontracts for Commercial Items (AUG 2019)(DEVIATION APR 2020).**

(ix) [52.253-1](#), Computer Generated Forms (*Jan* 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (*Oct 2018*)(Pub. L. 109-282) ([31 U.S.C. 6101 note](#)) (Applies to contracts valued at \$30,000 or more).

(ii) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (*Jan 2020*) (E.O.13126) (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(iii) [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (*May 2014*) ([41 U.S.C.chapter 65](#)) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iv) [52.222-35](#), Equal Opportunity for Veterans (*Oct 2015*) ([38 U.S.C.4212](#)) (applies to contracts of \$150,000 or more).

(v) [52.222-36](#), Equal Employment for Workers with Disabilities (*Jul 2014*) ([29 U.S.C.793](#)) (Applies to contracts over \$15,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, “United States” includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(vi) [52.222-37](#), Employment Reports on Veterans (*Feb 2016*) ([38 U.S.C.4212](#)) (Applies to contracts of \$150,000 or more).

(vii) [52.222-41](#), Service Contract Labor Standards (*Aug 2018*) ([41 U.S.C.chapter 67](#)) (Applies to service contracts over \$2,500 that are subject to the Service Contract Labor Standards statute and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer Continental Shelf).

(viii)

(A) [52.222-50](#), Combating Trafficking in Persons (*Jan 2019*) ([22 U.S.C. chapter78](#) and E.O 13627) (Applies to all solicitations and contracts).

(B) Alternate I (*Mar 2015*) (Applies if the Contracting Officer has filled in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), and contract performance location outside the United States to which the document applies).

(ix) [52.222-55](#), Minimum Wages Under Executive Order 13658 (*Dec 2015*) (Applies when [52.222-6](#) or [52.222-41](#) are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia)).

(x) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (*Jan 2017*) (E.O. 13706) (Applies when [52.222-6](#) or [52.222-41](#) are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia.))

(xi) [52.223-5](#), Pollution Prevention and Right-to-Know Information (*May 2011*) (E.O. 13423) (Applies to services performed on Federal facilities).

(xii) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (*Jun 2016*) (E.O. 13693)(applies to contracts for products as prescribed at FAR [23.804\(a\)\(1\)](#)).

(xiii) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (*Jun 2016*) (E.O. 13693) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).

(xiv) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (*Dec 2007*) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP)) will be-

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance).

(xv) [52.223-20](#), Aerosols (*Jun 2016*) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons as a propellant or as a solvent; or contracts for maintenance or repair of electronic or mechanical devices).

(xvi) [52.223-21](#), Foams (*Jun 2016*) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent; or contracts for construction of buildings or facilities).

(xvii) [52.225-1](#), Buy American-Supplies (*May* 2014) ([41 U.S.C. chapter 67](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition-

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(xviii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (*May* 2014) ([42 U.S.C. 1792](#)) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States).

(xix) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (*Oct* 2013) (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) as its source of EFT information).

(xx) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (*Jul* 2013) (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information).

(xxi) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (*Feb* 2006) ([46 U.S.C. App. 1241](#)) (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#))).

(2) Listed below are additional clauses that may apply:

(i) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (*Jun* 2016) (Applies to contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

(ii) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (*Oct* 2015) (Applies to contracts over \$35,000).

(iii) [52.211-17](#), Delivery of Excess Quantities (*Sept* 1989) (Applies to fixed-price supplies).

(iv) [52.247-29](#), F.o.b. Origin (*Feb* 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (*Nov* 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (Feb 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights-

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with

any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

* * * * *

52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause:

PROGRESS PAYMENTS (APR 2012) ~~DEVIATION (APR 2020)~~

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) Computation of amounts.

(1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as **90** percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR [31.205-10](#) as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors-

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless-

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for-

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed **90** percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (a)(5) of this clause, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(b) *Liquidation*. Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or **90**

percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) of this clause, and that rate is less than the progress payment rate stated in paragraph (a)(1) of this clause.

(d) Title.

(1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; *e.g.*, the termination clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not-

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see [45.101](#)).

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports, forms, and access to records.

(1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting

Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment shall:

(i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

(ii) Include any additional supporting documentation requested by the Contracting Officer.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights.

(1) No payment or vesting of title under this clause shall-

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause-

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Financing payments to subcontractors.* The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to-

- (i) The unliquidated remainder of financing payments made; plus
- (ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments-

- (i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;

- (ii) Are at least as favorable to the Government as the terms of this clause;

- (iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

- (iv) Are in conformance with the requirements of FAR [32.504\(e\)](#); and

- (v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-

- (A) The Contractor defaults; or

- (B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments-

- (i) Are substantially similar to the Performance-Based Payments clause at FAR [52.232-32](#) and meet the criteria for, and definition of, performance-based payments in FAR [part 32](#);

- (ii) Are in conformance with the requirements of FAR [32.504\(f\)](#); and

- (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcon-

tract to the Government's right to require delivery of the property to the Government if-

- (A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments-

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR parts 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the

costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) *Due date.* The designated payment office will make progress payments on the _____ [Contracting Officer insert date as prescribed by agency head; if not prescribed, insert "30th"] day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) *Progress payments under indefinite-delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

Alternate I (Mar2000) (DEVIATION APR 2020). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of **95** percent for small business concerns (see FAR [32.501-1](#)).

* * * * *

52.232-40 Providing Accelerated Payments to Small Business Subcontractors.

As prescribed in [32.009-2](#) , insert the following clause:

PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (DEVIATION APR 2020)

(a)(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 2307, upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract in accordance with the accelerated payment date established, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, with a goal of 15 days after receipt of a proper invoice and all other required documentation from the small business subcontractor if a specific payment date is not established by contract.

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of clause)

* * * * *

52.244-6 Subcontracts for Commercial Items.

As prescribed in [44.403](#), insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2019) (DEVIATION APR 2020)

(a) *Definitions.* As used in this clause—

Commercial item and “commercially available off-the-shelf item” have the meanings contained in Federal Acquisition Regulation [2.101](#), Definitions.

Subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (*Oct 2015*) ([41 U.S.C. 3509](#)), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (*Jun* 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (*Jan* 2017).

(iv) [52.204-21](#), Basic Safeguarding of Covered Contractor Information Systems (*Jun* 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause [52.204-21](#).

(v) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul* 2018) (Section 1634 of Pub. L. 115-91).

(vi) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) [52.219-8](#), Utilization of Small Business Concerns (*Oct* 2018) ([15 U.S.C.637](#)(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(viii) [52.222-21](#), *Prohibition of Segregated Facilities* (*Apr* 2015).

(ix) [52.222-26](#), Equal Opportunity (*Sept* 2015) (E.O.11246).

(x) [52.222-35](#), Equal Opportunity for Veterans (*Oct* 2015) ([38 U.S.C.4212\(a\)](#));

(xi) [52.222-36](#), Equal Opportunity for Workers with Disabilities (*Jul* 2014) ([29 U.S.C.793](#)).

(xii) [52.222-37](#), Employment Reports on Veterans (*Feb* 2016) ([38 U.S.C.4212](#))

(xiii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (*Dec* 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xiv)

(A) [52.222-50](#), Combating Trafficking in Persons (*Jan* 2019) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(B) Alternate I (*Mar* 2015) of [52.222-50](#)([22 U.S.C. chapter 78](#) and E.O. 13627).

(xv) [52.222-55](#), Minimum Wages under Executive Order 13658 (*Dec* 2015), if flow down is required in accordance with paragraph (k) of FAR clause [52.222-55](#).

(xvi) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (*Jan* 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause [52.222-62](#).

(xvii)

(A) [52.224-3](#), Privacy Training (*Jan* 2017) ([5 U.S.C. 552a](#)) if flow down is required in accordance with [52.224-3\(f\)](#).

(B) Alternate I (*Jan* 2017) of [52.224-3](#), if flow down is required in accordance with [52.224-3\(f\)](#) and the agency specifies that only its agency-provided training is acceptable).

(xviii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (*Oct* 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

(xix) **52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) [(DEVIATION APR 2020)], if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.**

(xx) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (*Feb* 2006) ([46 U.S.C. App.1241](#) and [10 U.S.C.2631](#)), if flow down is required in accordance with paragraph (d) of FAR clause [52.247-64](#)).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

Section 1.4 – Deviations from the FAR

Subsection 1.4.2 – EAS Use of Provisions and Clauses (December 2019)

1.4.2.1 Purpose.

This subsection discusses provision and clause availability in the EPA Acquisition System (EAS), and how contracting officers (COs) may process custom provisions, clauses and deviations in EAS.

1.4.2.2 Background.

In order to provide consistency and uniformity across Office of Acquisition Solutions (OAS) solicitations and contracts, access in EAS version 7.2 has been restricted so that contracting officers (COs) and contract specialists can no longer add unique CO-added provisions and clauses to solicitations and contracts. This subsection discusses provision and clause availability in EAS, and how COs may process custom provisions, clauses and deviations in EAS.

1.4.2.3 Authority/Applicability.

This subsection is issued in accordance with FAR 1.301(a), 1.401(f), EPA Delegations Manual 1-2, *Acquisition Management*; and EPA Acquisition Guide (EPAAG) Section 1.2.

1.4.2.4 Definitions [Reserved].

1.4.2.5 Policy.

1.4.2.5.1 Mandatory Use of EAS

(a) The CO shall use EAS to insert all FAR, EPAAR, and EPAAG provisions and clauses in solicitation and award documents.

(1) Provision and clause fill-ins shall be completed in EAS prior to generating the solicitation or award document.

(2) If a provision or clause is permitted to be modified as described in FAR 52.104, the CO may use the edit function in EAS to modify the clause. All modifications to provisions and clauses shall be completed in EAS prior to generating the solicitation or award document.

(3) If a new FAR or EPAAR provision or clause is required but is not yet available in EAS, the CO should submit a help desk ticket to request an interim version of the provision or clause be

added to the local database for use, until the FAR or EPAAR provision or clause is added to EAS by the EAS contractor.

(4) If an updated version of a FAR or EPAAR provision or clause is required but is not yet available in EAS, the CO may use the edit function in EAS to insert the proper text and date in the outdated version that is in EAS. The CO may not otherwise modify an outdated provision or clause unless permitted by its prescription.

(b) The CO shall use the functionality of EAS to the maximum extent possible to fully populate provisions and clauses prior to generating solicitation and award documents. However, COs may use the check-out feature in EAS to make minor edits to a solicitation or award document. Minor edits include edits to provision or clause text (when permitted by the prescription and when necessary changes could not be completed using the edit function); completing complex fill-ins such as tables; and minor formatting.

1.4.2.5.2 Deviations

(a) COs shall ensure that when editing a checked-out document, no edit is made that meets the definition of a “deviation” as described in FAR 1.401. “Deviation” means any one or combination of the following:

(1) The issuance or use of a policy, procedure, solicitation provision, contract clause, method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.

(2) The omission of any solicitation provision or contract clause when its prescription requires its use.

(3) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the FAR.

(4) The use of a solicitation provision or contract clause prescribed by the FAR on a “substantially as follows” or “substantially the same as” basis, if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the FAR.

(5) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the FAR.

(6) The issuance of policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into agency acquisition regulations in accordance with FAR 1.301(a).

(b) All deviations (individual and class) shall be approved by the Head of the Contracting Activity (HCA) in accordance with EPAAG 1.4.1, EPAAR 1501.4, and FAR 1.403 (where the “Agency Head” function has been delegated to the HCA).

(c) If the HCA approves a class deviation to a provision or clause, the determination and findings (D&F) for the deviation will be included in EPAAG 1.4.1 and the deviated provision or clause will be added to EPAAG 52.2 and the EAS local clause database for use. The CO shall use class deviations only when permitted by the scope of the class deviation D&F.

(d) After receiving approval for individual deviations, the CO may use either the “edit” function or the “check-out” feature in EAS to edit the text of the deviated provision or clause. The CO shall follow the procedures of FAR 52.103 when adding deviated provisions or clauses to solicitations and contracts.

(e) COs who release solicitations or awards that contain deviations not approved by the HCA may be subject to disciplinary action.

1.4.2.5.3 Custom or New Provisions and Clauses

If the CO requires a custom or new provision or clause not already found in the FAR, EPAAR or EPAAG, or requires permanent revisions to existing provisions or clauses that do not fall under the definition of deviation, the CO should submit a request following the procedures contained in EPAAG 1.3.2. The CO shall not include custom/new or revised provisions and clauses in solicitations or clauses until the provision or clause has been approved and published in the EPAAR or EPAAG.

Section 1.6 – Career Development, Contracting Authority, and Responsibilities

Subsection 1.6.1 - Reviews, Concurrences, and Checklists (December 2019)

This subsection was previously Unit 4.1 of the Acquisition Handbook.

1.6.1.1 Purpose.

This subsection lists the required reviews, concurrences, and approvals in connection with the acquisition process, including delegations made by the EPA Senior Procurement Executive (SPE) in accordance with the EPA Delegations Manual, 1-2, Acquisition Management. The list is not inclusive of each review, concurrence, and approval requirement in the Federal Acquisition Regulation (FAR), the EPA Acquisition Regulation (EPAAR), or the EPA Acquisition Guide (EPAAG), but rather covers significant actions in the acquisition process where it is necessary to establish Agency policy or delegate from requirements in the FAR. Contracting officers are responsible for knowing and following the applicable review and approval requirements included in the FAR, EPAAR, EPAAG and other Agency policies.

1.6.1.2 Background [Reserved].

1.6.1.3 Authority/Applicability.

The authorities for this policy are provisions of the FAR, the EPAAR, and the EPAAG as they apply to the specific reviews, concurrences, and approvals required in connection with the acquisition process.

1.6.1.4 Definitions/Acronyms.

AAC	Agency Advocate for Competition
APTB	Acquisition Policy and Training Branch
BC	Branch Chief
CO	Contracting Officer
*CCO	Chief of the Contracting Office
DD	Division Director
*HCA	Head of the Contracting Activity
OGC	Office of General Counsel
OSDBU	Office of Small Disadvantaged Business Utilization
RAM	Regional Acquisition Manager
SAT	Simplified Acquisition Threshold
SACO	Simplified Acquisition Contracting Officer
SBS	Small Business Specialist
SPE	Senior Procurement Executive

SRO	Senior Resource Official
SSA	Source Selection Authority
TDO	Term Determining Official

*See EPAAR 1502.1 Definitions

1.6.1.5 Policy.

(a) Reviews and approvals are included in EPAAG 1.6.1 Attachment A. As noted in Attachment A, all types of contracts and contract actions are subject to EPAAG 1.6.1 reviews and approvals.

(b) Approval requests shall go through review and approval processes outlined in Attachment A and shall include the contract file along with the action to be reviewed. EPA Forms 1900-70, EPA Contract Checklist and 1900-71, Reviews, Concurrences and Approvals, are required for use and shall be filed in the official contract file. EPA Form 1900-70 can be found in EAS, and EPA Form 1900-71 can be found on the Office of Acquisition Solutions (OAS) Knowledge Management Site. All review comments and the resolution/response to the comments shall be recorded on the 1900-71 or an attachment to 1900-71 such as EPAAG 1.6.1 Attachment B and included in the official contract file. EPA Form 1900-37, *Record for Procurement Request Review*, is required for use and shall be submitted to OSBP for review in accordance with EPAAG 1.6.1 Attachment A.

(c) All contracting documents submitted to OGC shall include the OGC Review and Approval Document (RAD) which is included as EPAAG 1.6.1 Attachment C. All documents requiring OGC review shall include a separate RAD. Additionally, documents which have been previously submitted to OGC and require revisions, shall require the submission of a new RAD. All RADs must be reviewed, approved and signed by a Service Center Manager prior to being submitted to OGC. OGC will use their best efforts to complete reviews within five working days of receipt. All RADs and OGC review comments, along with the resolution/response to those comments, shall be included in the official contract file.

(d) APTB will strive to complete reviews within three working days of receipt. All APTB comments, along with the resolution/response to those comments shall be included in the official contract file.

(e) For Regional Contracting Offices: Delegations establishing levels above the contracting officer for reviews, concurrence, and approvals in connection with the acquisition process will be established by the Superfund/RCRA Regional Procurement Operations Division (SRRPOD) director and will be designated on a case-by-case basis to the individual Regional Acquisition Manager (RAM) rather than by functional position. The Assistant Regional Administrator may submit a request for waiver of these requirements to the Head of the Contracting Activity (HCA).

(f) Delegations establishing levels above the contracting officer for Simplified Acquisition Contracting Officers (SACOs) not located within a Regional Contracting Office or an OAS

Procurement Operations Division shall be established by and fall within the office that issued the SACO's warrant. Waivers for delegations outside the office issuing the warrant may be submitted to the HCA for approval.

(g) The Branch Chief (BC) may establish internal OAS approval levels for contract values below those specified in this Subsection unless the BC's delegation of procurement authority is otherwise restricted.

- (1) Delegation of procurement authority will only be considered for those in the professional contracting 1102 series where the position is organizationally above other 1102s within the specific contracting activity.
- (2) The internal peer review is only required if the contracting officer is approving his or her own work. The peer review shall be performed by another contracting officer with sufficient warrant authority for the action being reviewed. For actions requiring team leader or higher approval, contracting officers may not approve their own work. For actions requiring team leader or BC approval, in exceptional cases, the Chief of the Contracting Office (CCO) may designate an individual other than the team leader or BC so long as that individual has sufficient warrant authority for the action being approved. The designation must be made in writing on a case by case basis and included in the official contract file.
- (3) Dollar thresholds for review are defined as up to, but not including, the highest threshold given. For example, Micropurchase - \$1M includes all actions at the micropurchase threshold to \$999,999.99. Actions at \$1M fall within the next category of review which is \$1M - \$10M. Only one threshold is applicable for each approval level. For example, a \$10M action which requires BC approval would not require lower-threshold peer- and team-leader reviews unless required by internal contracting office policy.

EPAAG 1.6.1 Attachment A, March 12, 2020

Item	Description	Citation	Category	Review/Approval	Notes
* See EPAAG 1.6.1.5(e) for Regional Contracting Office Authority					
1.	All solicitations, competitive range determinations, and awards including task/delivery orders, BPA Setups, BPA Calls, SAT, Purchase Card Orders and Purchase Orders.	EPAAG 1.6.1	a. Micropurchase - \$1M b. Micropurchase – SAT for SACOs in OAR and ORD c. \$1M - \$10M d. \$5M and above e. \$10M and above	a. Review: Internal Peer Review Approval: CO b. Review: Internal Peer Review within SACO management chain c. Approval: Team Leader or higher d. Review: OGC *See Item 41 for OGC review requirements e. Approval: BC or RAM	See EPAAG 1.6.15 Paragraph G Two separate reviews/approvals are required: the initial solicitation must be reviewed/ approved prior to release, and the award must be reviewed/approved. Purpose of review/approval of task/delivery orders and BPA calls is to ensure fair opportunity is given to all contract holders and that orders are in accordance with contract criteria. The competitive range determination must be approved prior to holding discussions. Do not submit contractor technical proposals unless specifically requested.
2.	Modifications (Excluding options and incremental funding executed in accordance with the contract)	EPAAG 1.6.1	a. Micropurchase- SAT b. SAT - \$10M c. \$10M & above	a. Approval: CO b. Approval: Team Leader or higher c. Approval: BC or RAM	Approval must be obtained prior to execution of the modification. Options or incremental funding mods do not require approval except when they are not executed in strict accordance with the contract.
3.	Ratification of Unauthorized Commitments Determination & Findings	FAR 1.602-3 EPAAR 1501.602-3	a. Below \$25,000 b. \$25,000 and above	a. Approval: CCO or RAM b. Approval: SPE	EPAAR 1502.100, "...For purposes of ratification authority only, CCO also includes Regional Acquisition Managers. (See 1501.602-3(b)(3) for the criteria for this ratification authority)."

EPAAG 1.6.1 Attachment A, March 12, 2020

					EPAAR 1501.602-3(c)(3) "...Concurrence by the Office of General Counsel is not mandatory, but shall be sought in difficult or unusual cases."
4.	Forward suspected or possible violations of the Procurement Integrity Act	FAR 3.104-7	c. No procurement impact d. Procurement impact	c. Review: OGC Approval: CCO d. Review: OGC CCO Approval: HCA	None
5.	Forward suspected violations of the Gratuities clause in solicitations or contracts to IG	FAR 3.203 EPAAG 1.6.1	All	Review: OGC Approval: CCO	None
6.	Misrepresentations or Violations of the Covenant Against Contingent Fees	FAR 3.405(a)	All	Review: OGC Approval: BC or RAM	None
7.	Determination for Exclusion of Sources to Establish or Maintain Alternative Sources	FAR 6.202	All	Review: OGC AAC Approval: BC or RAM	None
8a.	Justifications that Limit Competition (Excluding Bridge Justifications that Limit Competition)	FAR 6.304(a) FAR 8.405-6 FAR 13.106(b) FAR 13.501(a) FAR 16.505(b)(2)(ii)(C) EPAAR 1513.170 EPAAR 1506 EPAAG 1.6.1	a. Micropurchase – \$700K b. Above \$700K - \$13.5M c. Above \$13.5M d. Above SAT	a. Review: CO Approval: Team Leader or higher Courtesy Copy: AAC b. Review: OGC BC or RAM Approval: AAC c. Review: OGC BC or RAM AAC Approval: HCA d. Review: AAC – In addition to the above reviews/approvals, Brand Name	This includes any action that limits competition in accordance with any part of the FAR or EPAAR, e.g, brand name acquisitions, FSS limited sources, sole source, 8As over \$22M, etc. Justifications should be prepared in accordance with the applicable FAR/EPAAR/EPAAG reference. Courtesy copy to AAC immediately after award. In the absence of the AAC, the HCA is the alternate approval authority. The contracting officer shall notify the AAC in accordance with EPAAR 1506.302-5(b)(2) whenever a sole source contract award of any dollar value is made citing Section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 as the authority.

EPAAG 1.6.1 Attachment A, March 12, 2020

8b.	<p>Bridge Justifications that Limit Competition</p> <p>*Public posting of justifications</p>	<p>EPAAG 6.3.1</p> <p>EPAAG 8.4.1.5(a)(9)</p> <p>EPAAG 13.1.1.5</p> <p>EPAAG 13.5.1.5</p> <p>EPAAG 16.5.1.5.1</p>	<p>a. Micropurchase – \$700K</p> <p>b. Above \$700K - \$13.5M</p> <p>c. Above \$13.5M</p>	<p>Justifications above the SAT must be reviewed by the AAC.</p> <p>a. Review: CO Approval: BC or RAM Courtesy Copy: AAC</p> <p>b. Review: OGC DD or RAM Approval: AAC</p> <p>c. Review: OGC DD or RAM AAC Approval: HCA</p>	<p>The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase. The contracting officer must not solicit quotations based on personal preference; <i>or restrict solicitation to suppliers of well-known and widely distributed makes or brands.</i> (FAR 13.104(a)) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (<i>e.g.</i>, urgency, exclusive licensing agreements, <i>brand-name</i> or industrial mobilization). (FAR 13.106-1(b)) Contracting officers should consult OGC and the AAC with any questions regarding brand name justifications.</p> <p>All guidance provided in this column also applies to Bridge Justifications that Limit Competition.</p> <p>All posted justifications above the SAT are subject to audit by the AAC on a quarterly basis.</p>
9.	Consolidation	<p>FAR 7.107-2</p> <p>EPAAG 7.1.2.5.1</p>	<p>Above SAT - \$2M</p> <p>Above \$2M</p>	<p>Approval: Small Business Specialist</p> <p>Review: Small Business Specialist</p>	<p>The SBS responsibility for reviewing consolidation or bundling determinations is</p>

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	Bundling Substantial Bundling	FAR 7.107-3&4 EPAAG 7.1.2.5.1	Above SAT - \$2.5M \$2.5M or more	Approval: SPE Approval: Small Business Specialist Review: Small Business Specialist Approval: SPE	performed by the Agency Advocate for Competition. See Block #13 for OSDBU review requirement.
10.	Three-Year Acquisition Plans	EPAAG 7.1	All	Review: AAC Approval: SRO & CCO	None.
11.	Advanced Procurement Plans	EPAAG 7.1	a. Below SAT b. SAT-\$10M c. Above \$10M d. All plans over \$700K that limit competition	a. Approval: CO b. Approval: Team Leader or higher c. Review: BC or RAM AAC Approval: CCO d. Review: AAC	Below SAT applies to Cost Reimbursement and high-risk actions only. All other thresholds apply to all contracts.
12.	Management Controls Advisory and Assistance or Vulnerable Services	EPAAG 7 EPAAG 1.6.1	a. SAT & Below b. SAT - \$10M c. Over \$10M	a. Approval: CO b. Approval: Team Leader or Higher c. Approval: BC or RAM	None
13.	OSDBU Review	EPAAG 1.6.1 FAR 7.107 EPAAG 7.1.2	Above SAT	Review: OSDBU Approval: OSDBU (only applies to assisted acquisition consolidated or bundled requirements – see EPAAG 7.1.2.5.3)	All acquisitions over the SAT must be sent to OSDBU for review using EPA Form 1900-37, <i>Record of Procurement Request Review</i> . OSDBU should respond to all requests made within 10 calendar days. Concurrence of the proposed acquisition strategy should be provided by OSDBU prior to the CO finalizing the acquisition strategy. See OSDBU's <i>Guidance for Submitting and Reviewing EPA Form 1900-37 Packages</i> . If the acquisition strategy or plan involves contract consolidation or bundling and the estimated value is above the SAT, the

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					determination must be sent to OSDBU for review using EPA Form 1900-37, <i>Record of Procurement Request Review</i> . OSDBU shall assist the CO in identifying alternative strategies that would reduce or minimize the scope of the consolidation or bundling.
14.	Waiver Request to Use Contract Vehicle Other than Common Contract Solutions	EPAAG 8.0.100	All a. ≤ \$100,000 b. > \$100,000	Concurrence: Manager/Supervisor/Approving Official a. Approval: Chief, Category Mgt. Branch b. Review: Chief, Category Mgt. Branch Approval: SPE	See EPAAG 8.0.100 – Mandatory Requirements for Use of Common Contract Solutions and 8.0.100-A Waiver Request
15.	Waive any general rule or procedure of FAR Subpart 9.5 prior to award when a conflict cannot be avoided, neutralized or mitigated	FAR 9.503 EPAAR 1509.503	All	Review: APTSC OGC Approval: HCA	None
16.	CO's Conflict of Interest Plan prior to issuing solicitation	FAR 9.504 FAR 9.506 EPAAG 9.5.1 & 9.5.3	All	Review: APTSC OGC Approval: CCO	If the solicitation will restrict competition due to a conflict of interest, HCA and AAC approval are required. HCA approval and AAC review are not required when: (1) the acquisition is a follow-on from a previous contract and; (2) the Performance Work Statement has not changed and/or; (3) the strategy is the same as in the current contract.

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17.	Waiver of post-award COI procedures for significant COI when a conflict cannot be avoided, neutralized or mitigated	EPAAG 9.5.2 EPAAG 1.6.1	All	Review: APTSC OGC Approval: CCO	None
18.	Waiver of FAR clause 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications, Sealed Bidding	FAR 14.201-7(b)(2)	All	Approval: CCO	None
19.	Waiver of FAR clause 52.214-28, Subcontract Cost or Pricing Data—Modifications, Sealed Bidding	FAR 14.201-7(c)(2)	All	Approval: CCO	None
20.	Determination - cancellation of sealed bids after opening	FAR 14.404-1(c)	All	Review: OGC Approval: BC or RAM	Approval is only required for sealed bids under FAR 14. Solicitation cancellations under other parts of the FAR do not require approval; however, OGC review is highly recommended.
21.	Administrative determination in connection with mistakes in bid	FAR 14.407-3(e) FAR 14.407-4(d)	All	Review: OGC Approval: BC or RAM	None
22.	Source Selection Authority	FAR 15.303	a. Up to \$10M b. \$10M and higher	a. SSA is CO b. SSA is BC or RAM but is redelegable	None
23.	Determine participants in award fee contract process	EPAAG 16.4.1	All	Approval: BC or RAM	None
24.	Award fee plans for acquisition prior to solicitation issuance	EPAAG 16.4.1.5.3	All	Approval: SSA	None
25.	Determination to Use an Incentive Type Contract	FAR 16.401(d)	All	Approval: CCO	None
26.	D&F for use of time-and-material/ labor hour contract or order prior to the execution of the base period, when the base period plus any option periods exceeds three (3) years	FAR 1.707 FAR 8.404(h)(3)(ii)(c) FAR 16.601(d)(1)(ii) EPAAG 1.6.1	All	Review: APTB Branch Chief PTOD DD Approval: HCA	None

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27.	D&F to use a letter contract	FAR 16.603-3	All	Review: OGC Approval: CCO	None
28.	Interagency Acquisitions	FAR and EPAAG 17.5	a. Economy Act D&F b. Direct Acquisition or Assisted Acquisition Justification	a. Approval: CO b. Concurrence: CO	None
29.	Emergency Acquisition Flexibilities	FAR 18.2	All	Review: OGC Approval: CCO	None
30.	Questions concerning applicability of E.O. 11246 - Equal Employment Opportunity	FAR 22.803(d)	All	Review: OGC Approval: CCO	None
31.	Requests for limitation, tolerances and exemptions from the Service Contract Act	FAR 22.1003-4	All	Review: OGC Approval: BC or RAM	None
32.	Complaints to DOL - Special Disabled and Vietnam Veterans	FAR 22.1308	All	Review: BC or RAM	None
33.	Use of Overtime	FAR 22.103-4(a)	All	Approval: BC or RAM	May be delegated to a warranted CO.
34.	Determinations - Buy American Act	FAR 25.103(b)(2)(i)	All	Approval: BC or RAM	None
35.	Waive CAS Board requirements	FAR 30.201-5	All	Approval: PTOD Division Director	None
36.	Agency Protests	FAR 33.103(f)(1) FAR 33.103(f)(3) EPAAR 1533.103-3	All	Review: OGC AAC Approval: CCO	None
37.	GAO Protests	FAR 33.104(b)(1) FAR 33.104(c)(1)	All	Review: OGC AAC Approval: CCO	None
38.	Suspected fraudulent claims under Contract Disputes Act to IG	FAR 33.209	All	Review: CCO	None
39.	Contracting Officer's final decision on claims	FAR 33.211	All	Review: OGC Approval: CCO	None

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40.	D&F for use of Personal Services	FAR 37.104(e) EPAAG 1.6.1	All	Review: OGC Approval: BC or RAM	None
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41.	Request for Change of Product or Service Code (PSC)	EPAAG 37.2.100	All	<p>Concurrence: RAM/DD APTSC BC PTOD DD</p> <p>Approval: HCA</p>
42.	OGC Review	EPAAG 1.6.1	<p>a. Any Value</p> <ul style="list-style-type: none"> • D&Fs: <ul style="list-style-type: none"> ○ Use of Personal Services ○ Letter Contract ○ Emergency Acquisition Flexibilities (FAR 18.2) ○ Exclusion of Sources to Establish or Maintain Alternative Sources (FAR 6.202) ○ Cancellation of Sealed Bids after Opening (FAR 14.404-1(c)) • Terminations for Cause or Default* • Reporting Suspected Anti-Trust Violations (FAR 3.303) • Exceptions to Prohibition Against Contracting with Govt Employees (FAR 3.602) • Misrepresentations or Violations of the Covenant Against Contingent Fees (FAR 3.405(a)) • COI Plans (EPAAG 9.5.1 & 9.5.3) • Waive post award COI procedures (EPAAG 9.5.2) • Questions concerning applicability of E.O. 11246 - Equal Employment Opportunity (FAR 22.803(d)) • Requests for limitation, tolerances and exemptions from the Service Contract Act (FAR 22.1003-4) • Agency Protests • GAO Protests • CO Final Decisions on Claims • Novations/Change of Name Agreements (FAR 42.1203(f)) • Requests to Procure Legal Services • Licensing Agreements • Notice of Assignments • Hotel Agreements 	<p>All actions sent to OGC include an OGC Review and Approval Document (Attachment C) and must be reviewed/approved by the Service Center Manager* as well as any other higher authorities as required by the FAR, EPAAR, or EPAAG.</p> <p><i>*Terminations for Cause or Default require recommendation by the BC or RAM and approval by the CCO.</i></p> <p>All OGC review comments and resolutions shall be memorialized in the contract file. A copy of the comment resolutions shall be furnished to OGC within 15 days following the date of the original OGC comments.</p> <p>Contract actions which do not meet OGC review thresholds shall be examined to identify whether there are issues which are unique or might benefit from legal evaluation and counsel. Where identified, such issues must be raised to OGC in a timely manner.</p>

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			<ul style="list-style-type: none">• Gratuitous Service Agreements <p>b. All JOFOCS \$700,000 and above</p> <p>c. \$5M & Above</p> <ul style="list-style-type: none">• Solicitations (excluding task/delivery orders)• Competitive Range Determinations• Awards (excluding task/delivery orders)• Determination to use a letter contract• Emergency procurement authorities <p>d. \$10M & Above</p> <ul style="list-style-type: none">• Task/Delivery Orders• Any time the scope, period or maximum value of the basic contract is increased.	
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REVIEW AND COORDINATION SHEET

CONTRACT/SOLICITATION NO.	BUYER <i>(Name and Telephone No.)</i>	DATE
Purchase Request NO. (If applicable)	CONTRACTING OFFICER <i>(Name and Telephone No.)</i>	DATE
Modification NO. (If applicable)	REVIEWER <i>(Name and Telephone No.)</i>	DATE
Title of Acquisition	REVIEWER <i>(Name and Telephone No.)</i>	DATE
Name of Contractor	Reviewer <i>(Name and Telephone No.)</i>	DATE

ACTION BEING REVIEWED:[illegible]

EPAAG 1.6.1 Attachment C
OGC Review and Approval Document (RAD)

See EPAAG 1.6.1 Attachment A for requisite approval levels prior to submission to OGC.

From:

Contracting Officer

Date

Branch Chief

Date

Division Director (when applicable)

Date

Document Type and Identifying Number:

Requirement Description:

Estimated Maximum Potential Value:

OGC USE

☐ **Legally Sufficient**

☐ **Legally Insufficient**

OGC Attorney-Advisor

OGC Attorney-Advisor

Date: _____

Date: _____

OGC COMMENTS:

Subsection 1.6.2 - Ratification of Unauthorized Commitments (December 2019)

This subsection was previously Section 1.1 of the Contracts Management Manual.

1.6.2.1 Purpose.

This subsection establishes policy for use in ratifying unauthorized commitments.

1.6.2.2 Background [Reserved].

1.6.2.3 Authority/Applicability.

The procedures, approvals, and documentation needed to ratify unauthorized commitments are set forth in Federal Acquisition Regulation (FAR) 1.6 and EPA Acquisition Regulation (EPAAR) 1501.602-3.

1.6.2.4 Definitions [Reserved].

1.6.2.5 Policy.

- (a) The policy of the EPA is to discourage unauthorized commitments to the maximum extent possible. Actions that contractually bind the Agency should only be made by officials with a proper warrant of contracting officer authority.
- (b) Officials with contracting authority employed within the servicing purchasing/contracting offices in Headquarters, the regions, laboratories, or other field components should be consulted prior to any acquisition. If there is an indication of intent by an individual to knowingly place an unauthorized commitment, rather than a lack of knowledge or understanding of regulations, the ratifying official shall inform the Inspector General of the situation in accordance with the EPA Acquisition Regulation.
- (c) Individuals responsible for unauthorized commitments may have their certifications of authority as Contracting Officer Representative (COR), Blanket Purchase Agreement Ordering Officer, or Government Purchase Cards revoked by the Director, OAS in accordance with Chapter 1 of the EPA Acquisition Guide (EPAAG). The Director, OAS, shall forward the names of individuals whose certifications are so revoked to the Office of Inspector General, Senior Resource Official, and to the Division Director to whom the individual reports. Individuals may face other action, as detailed in the Agency's Conduct and Discipline Manual (EPA Order 3120.1B), ranging from an oral reprimand to removal based on the frequency and severity of their offense(s).

- (d) The contracting officer may recommend ratification of the unauthorized commitment only in the amount that is determined to be fair and reasonable. A cost and price analysis may be used as a tool to determine whether the price is fair and reasonable. Any additional amounts above the fair and reasonable amount may be the responsibility of the individual responsible for the unauthorized commitment

Subsection 1.6.3 - Contracting Series Training and Certification Program (December 2019)

This subsection was previously Unit 1.1 of the Acquisition Handbook.

1.6.3.1 Purpose.

This subsection establishes the framework for developing trained and skilled contract professionals with the ability to exercise business judgement, be innovative, and gain efficiencies while being effective stewards of taxpayers' dollars.

1.6.3.2 Background.

The quality and effectiveness of the federal acquisition process depend on the development of a capable and competent workforce. Congress recognized the need for a professional workforce through the passage of the Defense Acquisition Workforce Improvement Act (DAWIA) (10 U.S.C. §§ 1741-46), section 4307(a) of the Clinger-Cohen Act (40 U.S.C. § 1401(3) and amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433). These acts established education, training, and experience requirements for entry and advancement in the acquisition career fields for the Department of Defense (DOD) and civilian agencies respectively.

The Office of Management and Budget (OMB) OFPP Policy Letter 92-3, dated June 24, 1992, established policies for skill-based training in contracting and purchasing duties for all executive agencies. OFPP Policy Letter 97-01, dated September 12, 1997, established career management, education, and training requirements for contracting personnel in civilian executive agencies. OFPP Policy Letters 92-3 and 97-01 were rescinded with the issuance of OFPP Policy Letter 05-01, dated April 15, 2005. OFPP Policy Letter 05-01 consolidated OFPP policy letters 92-3 and 97-01 on acquisition workforce development.

OFPP Policy Letter 05-01 was issued pursuant to section 6(a) of the OFPP Act, as amended (41 U.S.C. § 405(a), and sections 37(b)(3) and (g) of the OFPP Act, as amended (41 U.S.C. § 433(b)(3) and (g)). The OFPP Policy Letter 05-01 established a requirement for Federal acquisition certification programs. On January 20, 2006, OFPP issued the first Federal Acquisition Certification in Contracting (FAC-C) program memorandum which was revised on December 1, 2008. On May 7, 2014, OFPP Memorandum, *Revisions to the Federal Acquisition Certification in Contracting (FAC-C)* was issued to focus on deploying a world-class workforce and creating a culture of excellence for contracting professionals.

1.6.3.3 Authority/Applicability.

The acquisition workforce plays a critical role, and contracting professionals lead efforts to ensure that mission needs are filled and expected outcomes achieved while safeguarding the interests of the Government.

The following statutes and policies provide authority for this section:

Section 4307(a) of the Clinger-Cohen Act (40 U.S.C. §1401(3), amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433)

Services Acquisition Reform Act of 2003, Public Law 108-136

OFPP Policy Letter 05-01, “Developing and Managing the Acquisition Workforce,” paragraph 8(c) (April 15, 2005)

OFPP Memorandum, “Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce” (September 3, 2013)

OFPP Memorandum, “Revisions to the Federal Acquisition Certification in Contracting (FAC-C)” (May 7, 2014)

Applicability:

- All contracting professionals in the Office of Personnel Management (OPM) Contracting, GS-1102 job series must be certified at an appropriate level for their grade in accordance with the policy.
- All members of the acquisition workforce holding a Contracting Officer (CO) warrant above the micropurchase threshold must be certified, regardless of GS series, except senior executive level officials responsible for delegating procurement authority (unless these individuals also sign contracts); and
- On-Site Coordinators (OSCs) with warrants that are used to procure emergency goods and services. The OSCs serve as Contracting Officer Representatives with certification requirements governed by EPAAG Subsection 1.6.5 - Contracting Officer’s Representatives Three-Tiered Program (March 2015). **FAC-C does not apply.**
- Any contracting professional issued an unlimited CO warrant is required to be FAC-C Level III certified.
- OPM Contracting, GS-1102 job series employees not certified under the previous policy shall be granted 24 months from the effective date of this policy to become certified at the appropriate FAC-C level for their grade in accordance with this policy.
- OPM Purchasing Agents, GS-1105 job series shall be certified at FAC-C Level I. Those employees not certified under the previous policy shall be granted 24 months from the effective date of this policy to become certified.
- Simplified Acquisition Officers with warrants exceeding the micropurchase threshold (currently \$3500); but not exceeding the simplified acquisition threshold (currently \$150,000) shall be FAC-C Level I certified.
- All Contracting Officers negotiating Indirect Cost Rates shall be FAC-C Level II certified.
- The Senior Procurement Executive may grant an additional 12- months FAC-C training extension for those employees not required to be certified under the previous policy to complete the FAC-C training courses to meet the appropriate grade level requirement. See Appendix 1.6.3-A and Appendix 1.6.3-B.
- Supervisors shall ensure all employees meet the requirements of this policy and report all non-compliance to the Director, Office of Acquisition Solutions (OAS); Senior Procurement Executive/Head of the Contracting Activity for resolution.

1.6.3.4 Definitions [Reserved].**1.6.3.5 Policy.****1.6.3.5.1 Promotion Qualification Standards' Criteria for 1102s (GS-5 through GS-15); Mandatory Training, Education, and Experience**

The series 1102 individual qualification standard was developed by the OMB OFPP under the authority of 41 U.S.C. 433. The Office of Personnel Management (OPM) implements the series 1102 qualification standards specified in this section. The FAC-C program continues to utilize the education and experience requirement as stated in the OPM Qualification Standard for Contract Specialists (series 1102s).

The Human Resources' Service Centers (HR SSCs) have OPM Qualification Standards authority for final determination decisions in evaluating official transcripts and crediting 24 semester hours to qualify an employee for GS-1102 positions on the basis of education in one or a combination of the following required fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management. **Issuance of FAC-C under the agency Acquisition Career Manager's (ACM) evaluation has no bearing on the HR SSC, OPM Education Qualification Standards' evaluations and decisions for hiring and promotions.**

(a) Mandatory Training Requirements

In accordance with the OMB, OFPP Memorandum," Revision to the Federal Acquisition Certification in Contracting (FAC-C) Program, May 7, 2014, contracting professionals in the 1102 job series must be certified at an appropriate level pursuant to agency policy. The FAC-C is required mandatory training for promotion to GS-1102 contracting positions as follows:

- (1) FAC-C Level I is required for promotion to GS-1102-11 and GS-1102-12 contracting positions.
- (2) FAC-C-Level II is a required for promotion to GS-1102-13 contracting positions.
- (3) FAC-C Level III is required for promotion to GS-1102-14 and higher level contracting positions.

Note: A FAC-C does not entitle an employee to a promotion, delegation of contract warrant authority, special assignment, or any other action that is at management discretion.

(b) Education:

- (1) The Defense Acquisition University (DAU) is fully accredited by the American Council on Education's College (ACE); but, it does not grant Academic degrees. Therefore, courses completed at the DAU are not creditable towards meeting the 24 semester hour education requirement stated in the 1102 job series qualification standards, unless the coursework has been evaluated by an accredited college or university recognized by the U.S. Department of Education, and appears on an official college or university transcript.

- (2) Training listed on an ACE Credit Recommendation Service (ACE CREDIT) transcript is not considered education unless an accredited institution (college or university) recognized by the U.S. Department of Education actually gives an individual course credit under its curriculum and the courses are listed on the college or university's official transcript.
- (3) The ACE supports workplace training by helping adults gain access to academic credit for formal courses and examinations taken outside traditional degree programs. ACE connects with accredited institutions recognized by the U.S. Department of Education as degree granting colleges and universities and makes recommendations to colleges and universities for training courses to be considered for use in degree course credits. It is up to the colleges and universities to make the decision if the recommended ACE courses meet their course curriculum requirements under a degree program and if the courses will be placed on their official college or university transcript. This process is accomplished after enrollment into a college or university.

(i) FAC-C, Level I and Level II, has a positive education requirement:

- A four-year course of study leading to a baccalaureate degree with a major in any field from an accredited institution.

OR

- 24 semester hours from an accredited institution in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

(ii) FAC-C, Level III, has a positive education requirement:

A four-year course of study leading to a baccalaureate degree, that included or was supplemented by at least 24 semester hours from an accredited institution in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

The Federal Acquisition Institute's (FAI) provides guidelines to the ACM to help with evaluating 24-hours of business credits for FAC-C certification only. This resource provides fields of study and brief descriptions of the types of subject areas that might be seen within the Contracting Career Field or could possibly be counted towards meeting the Federal Acquisition Certification education standards as they relate to business semester credit hours. When evaluating an individual's university/college transcript(s), the ACM may consider a course that has an appropriate business application associated with it. In these cases, the ACM will ask the employee for a course description from the university/college catalog to support the evaluation in order to make a final decision.

(c) Education, Experience, and FAC-C Qualifications Requirements:

Employees shall be recommended by their supervisor for promotion based on a holistic

approach which includes meeting OPM basic promotion qualification standards, the mandatory Agency requirement for appropriate FAC-C Level, and the employee's overall performance. Table 1 shows the required education and/or experience, and FAC-C requirements to qualify for series 1102 promotion from grades GS-5 through GS-15 and higher. For grades GS-5 through 11, employees may meet either the education or the experience requirement plus the FAC-C requirement or a combination of education and experience combined plus the FAC-C requirement. For grades 12 and above, education cannot be substituted for experience, and the employee must meet all three requirements listed: education, experience, and FAC-C requirement.

Table 1

GRADE	EDUCATION	SPECIALIZED EXPERIENCE	FAC-C Requirement
GS -5	<p>A 4-year course of study leading to a bachelor's degree with a major in any field;</p> <p>or</p> <p>At least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.</p>	None	None
GS-7	<p>Applicants who meet the criteria for Superior Academic Achievement qualify for positions at the GS-7 level.</p> <p>One (1) full academic year of graduate education or law school or superior academic achievement.</p> <p>To qualify for GS-1102 position on the basis of graduate education; graduate education in one or a combination of the following fields is required: accounting, business, finance, law, contracts, purchasing, economics, industrial</p>	<p>If qualifying based on experience applicants must possess at least one year of specialized experience at/or equivalent to work at least at the GS-5 level that provided the knowledge, skills, and abilities to perform successfully the work of the position. For Exception see Grandfathering – The Exception Provisions</p> <p>Equivalent combinations of education and experience are acceptable when qualifying for GS-7.</p>	None

GRADE	EDUCATION	SPECIALIZED EXPERIENCE	FAC-C Requirement
	management, marketing, quantitative methods, or organization and management.		
GS-9	<p>Two (2) full academic years of progressively higher-level graduate education or masters or equivalent graduate degree or LL.B. or J.D.</p> <p>To qualify for GS-1102 positions on the basis of graduate education; graduate education in one or a combination of the following fields is required: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.</p>	<p>If qualifying based on experience applicants must possess at least one year of specialized experience at/or equivalent to work at least at the GS-7 level that provided the knowledge, skills, and abilities to perform successfully the work of the position. For Exception see Grandfathering – The Exception Provisions</p> <p>Equivalent combinations of education and experience are acceptable when qualifying for GS-9.</p>	None
GS-11	<p>Three (3) full academic years of progressively higher-level graduate education or Ph.D. or equivalent doctoral degree</p> <p>To qualify for GS-1102 positions on the basis of graduate education; graduate education in one or a combination of the following fields is required: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.</p>	<p>If qualifying based on experience applicants must possess at least one year of specialized experience at or equivalent to work at least at the GS-9 level that provided the knowledge, skills, and abilities to perform successfully the work of the position. For Exception see Grandfathering – The Exception Provisions</p> <p>Equivalent combinations of education and experience are acceptable when qualifying for GS-11.</p>	Level 1
GS-12	<p>(No educational equivalent)</p> <p>A 4-year course of study</p>	<p>If qualifying based on experience must possess at least one year of specialized experience at or</p>	Level 1

GRADE	EDUCATION	SPECIALIZED EXPERIENCE	FAC-C Requirement
	<p>leading to a bachelor's degree with a major in any field;</p> <p>or</p> <p>At least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.</p>	<p>equivalent to work at least at the GS-11 level that provided the knowledge, skills, and abilities to perform successfully the work of the position. For Exception see Grandfathering – The Exception Provisions</p>	
GS-13	<p>A 4-year course of study leading to a bachelor's degree, that included or was supplemented by at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.</p>	<p>Four (4) years' experience in contracting or related positions. At least 1 year of that experience must have been specialized experience at or equivalent to work at the GS-12 level that provided the knowledge, skills, and abilities to perform successfully the work of the position.</p> <p>For Exceptions see Grandfathering – The Exception Provisions</p> <p>For Waiver Provision: See Waiver Provisions</p>	Level 2
GS-14	<p>A 4-year course of study leading to a bachelor's degree, that included or was supplemented by at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and</p>	<p>Four (4) years' experience in contracting or related positions. At least 1 year of that experience must have been specialized experience at or equivalent to work at the GS-13 level that provided the knowledge, skills, and abilities to perform successfully the work of the position.</p>	Level 3

GRADE	EDUCATION	SPECIALIZED EXPERIENCE	FAC-C Requirement
	management.		
GS-15 or higher	A 4-year course of study leading to a bachelor's degree, that included or was supplemented by at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.	Four (4) years' experience in contracting or related positions. At least 1 year of that experience must have been specialized experience at or equivalent to work at the GS-14 level that provided the knowledge, skills, and abilities to perform successfully the work of the position	Level 3

(d) Specialized Experience Requirements

A qualified candidate must demonstrate at least one year of specialized experience equivalent to the next lower grade level in the Federal service. In addition to meeting the mandatory training and basic qualification requirements, applicants must meet specialized grade level experience for the grade level identified below. Experience may be time spent on the job in a contracting-related job assignment, either in the private or public sector, which reflects the accumulation of knowledge, skills and abilities during years of progressively responsible work assignments. **This experience may include, but is not limited to, the following examples:**

- **GS-11** level applicants must have one year of specialized experience at the GS-9 level. Examples of specialized experience may include:
 - Review of procurement requests.
 - Development of acquisition plans based on previous history, market conditions, and specifications.
 - Preparation of final contract draft.
 - Preparation and issuance of solicitation documents.
 - Performance of detailed analysis of bids or proposals received.

Note: When qualifying at the GS-11 level based on the education requirement of three full academic years of progressively higher-level graduate education or PhD or equivalent doctoral degree, one year of specialized experience is not required.

- **GS-12** level applicants must have one year of specialized experience at the GS-11 level. Examples of specialized experience may include:
 - Development of solicitations.

- Evaluation of bids or offers.
 - Performance of price analysis.
 - Planning and conducting negotiations.
 - Performance of contract administration.
- **GS-13** level applicants must have one year of specialized experience at the GS-12 level. Examples of specialized experience may include:
- Responsibility for pre-award and post-award functions.
 - Reviewing requests for procurement of complex equipment and services.
 - Preparation of solicitation and negotiation documents, analyzes proposals, and attendance at negotiations with lead contract negotiator and potential contractors.
 - Administration of contracts, preparation or assistance of agency position on protests, and closing out contracts.
 - Serving as a procurement analyst.
- **GS-14** level applicants must have one year of specialized experience at the GS-13 level. Examples of specialized experience may include:
- Performance of acquisition planning.
 - Advising program officials in acquisition planning meetings.
 - Identifying program requirements for the contract.
 - Serving as contract negotiator, lead negotiator with contractors.
 - Conducting contractor site visits.
 - Participating as a member of Source Evaluation Boards.
 - Serving as a procurement analyst.
- **GS-15** level applicants must have one year of specialized experience at the GS-14 level. Examples of specialized experience may include:
- Team lead or supervisory experience in a contract and/or procurement position.
 - Performance of complex, large dollar contracts/procurements.
 - Serving as lead negotiator.
 - Serving as principal contracting advisor and account executive to program management offices.
 - Having unlimited signature authority for large dollar or complex procurements.
 - Serving as a procurement analyst.

(e) Grandfathering" -- The Exception Provisions

- (1) Employees that were hired in GS-1102 positions at grades 5 through 12 before January 1, 2000 will be considered to have met the basic education and experience requirements standard for positions they occupied on January 1, 2000. This includes positions at other agencies. However, employees must meet specialized experience requirements when seeking promotion to another GS-1102 position up to and including those classified as GS-1102-12. The waiver provision-Section F-does not apply to GS-1102 positions at grades 5 through 12 under the Exception Provisions. A FAC-C is recommended for these

employees, but not required, when seeking another GS-1102 position up to and including those classified as GS-1102-12.

- (2) EPA Employees who have been in a GS-1102 position, at or above the GS-13 level, since January 1, 2000 without a break in service will be considered to have met the education, training, and experience qualification standards for the positions they currently occupy. A FAC-C is recommended for these employees, but not required, to maintain their current position.
- (3) Employees from other agencies applying for a position in EPA who have been in a GS-1102 position, at or above the GS-13 level, since January 1, 2000 without a break in service, only need to meet the 1-year of specialized experience requirements in order to qualify for an announced position at their current grade.
- (4) Employees who have been in a GS-1102 position, at or above the GS-13 level, since January 1, 2000 without a break in service must meet the education, specialized experience, and training requirements in order to qualify for promotion to a higher grade, unless granted a waiver by the Senior Procurement Executive (SPE) under the waiver provision in this policy, Section F.
- (5) ***There is no grandfathering provision that allows experience to substitute for education in order to qualify for promotions to GS-13 and above positions.***

(f) The Waiver Provision

The decision to grant a waiver of the qualification requirements is solely at the discretion of the Director, Office of Acquisition Solutions, agency Senior Procurement Executive (SPE), provided the announcement states that waivers may be considered. This waiver authority is not delegable. A waiver is the prerogative of the agency SPE and will only be granted based on unique circumstances of a hiring action. Waiver authority was created to provide flexibility to accommodate unique circumstances faced in an agency, and waivers are the exception rather than the rule. Waivers will be considered on a case-by-case basis and granted only in those exceptional cases where the best applicant for a specific position does not fully meet the qualification standard requirements. **"Blanket" waivers do not exist.**

- (1) In the case of GS-1102-13 and higher positions, the Agency may consider applicants who need a waiver under the waiver provision.
- (2) The waiver may be applied to any of the education, training, or experience requirements, or combination thereof.
- (3) The agency Senior Procurement Executive (SPE) may grant a waiver only if the selecting official decides to *select* an applicant that does not fully meet the qualification standards of this policy to fill a position and if the vacancy announcement indicates that waivers may be granted.
- (4) Any request for waivers for a job applicant will include comments and recommendation

from the HR SSC specialist and forwarded directly to the ACM.

- (5) The Agency's SPE shall document the decision to issue or not issue a waiver, with or without special hiring requirements.
- (6) Waivers are only valid for the current announced vacancy selection action.
- (7) In accordance with the OMB, OFPP Memorandum, "Revision to the Federal Acquisition Certification in Contracting (FAC-C) Program," May 7, 2014: The FAC-C program utilizes education, experience, and training requirements in the certification process. An individual must meet **all** the FAC-C requirements to be certified.
- (8) Education waivers granted by the agency SPE, in accordance with the qualification standard, are not transferable to other agencies and **do not satisfy the education requirement for FAC-C. An employee must meet the appropriate FAC-C education requirements to be certified.**

(g) Waiver Request Instructions

If the hiring official considers an applicant the best selection for a position, the hiring official shall present a written business case justification for selection to the agency SPE for a waiver request decision. The business case justification shall document qualifications relating to the applicant's acquisition related background, demonstrated analytical and decision-making capabilities, abilities to perform the requirements of the position being filled, leadership potential, and any another outstanding qualifying experience the applicant may have. A resume and other supporting documentation must be included with the business case justification.

The following steps are required:

- (1) The Selecting official must prepare a request for hiring waiver endorsement memorandum template included in this policy (Appendix 1.6.3-C) and attach a business case memorandum addressed to the Director, Office of Acquisition Solutions/Senior Procurement Executive to support the request for waiver endorsement.
- (2) When completing the "Hiring Waiver Endorsement Memorandum" template (see the attached sample shown in Appendix 1.6.3-C) add and change the information required; for example, fill in the request for waiver with applicant's name and change the highlighted information to your information.
- (3) The Division Director or Regional Acquisition Manager sends the package electronically to the ACM; who reviews and prepares the package for the SPE including comments and recommendation from the HR SSC specialist, signs off on routing sheet for the package, and provides the package to the SPE for final approval/disapproval. The waiver endorsement memorandum should be placed on top on the business case memorandum and supporting documentation.

- (4) The SPE provides a copy of the approved or disapproved Waiver Endorsement Memorandum with the submitted supporting package to the requesting Division Director and ACM.
- (5) The ACM shall keep files of all waiver packages.
- (6) The selecting hiring official shall provide a copy of the entire package, including a copy of the waiver, to OAS HR Liaison for submission with the announcement's selected candidate to the supporting Human Resources Shared Service Center to complete the hiring process.

1.6.3.5.2 Contracting Competencies

The contracting competencies refer to knowledge, skills, and abilities that workforce members must have to perform their contracting functions. These competencies align with the DOD Defense Acquisition Workforce Improvement Act (DAWIA) curriculum "Contracting Competency Model" as the framework for all civilian agency training. The contracting competency model consists of 52 technical elements and 10 professional elements. The contracting competencies are available to view or download from the internet at <http://www.fai.gov/drupal/certification/contracting-fac-c>.

1.6.3.5.3 Federal Acquisition Certification-Contracting (FAC-C) Refresh Program

The FAC-C program applies to all executive agencies, and as such, shall be accepted by all civilian agencies as evidence that an employee meets core education, experience, and training requirements to perform contracting functions. Agencies may add additional training requirements and require additional competencies and experience if needed to support their agency's mission. FAC-C does not apply to the Department of Defense (DOD).

The FAC-C program is founded on (1) core competencies that are considered essential for successful contracting, (2) education, (3) training, (4) experience, (5) continuous learning to maintain skills currency, and (6) developmental activities. FAC-C contains three levels of certification to allow for appropriate training and experience for contracting professionals managing a range of contract vehicles, from low-risk contracts (such as basic supplies) to high-risk, complex acquisitions (such as IT systems).

- (a) The Agency shall follow the new FAC-C (Refresh) curriculum as prescribed in this policy.
- (b) Use of the EPA Procurement Professional Certification certificate and the FAC-C Legacy Program were retired on September 30, 2015. After September 30, 2015, the following FAC-C Legacy courses may not be used for certification purposes in the FAC-C (Refresh) program:

- CON 110 and FCN 110 - Mission Support Planning;
- CON 111 and FCN 111 - Mission Strategy Execution;
- CON 112 and FCN 112 - Mission Performance Assessment;
- CON 120 - Mission Focused Contracting;
- CON 214 Business Decisions for Contracting;
- CON 215 Intermediate Contracting for Mission Support;

CON 217 Cost Analysis and Negotiation;
 CON 218 Advanced Contracting for Mission Support; and
 CON 353 - Advanced Business Solutions for Mission Support

- (c) Training requirements under the FAC-C (Refresh) program are closely aligned with the training requirements under DAWIA but are not identical.
- (d) The FAC-C (Refresh) curriculum will change periodically to maintain alignment with the DAWIA training requirements.
- (e) Future updates to the FAC-C (Refresh) curriculum can be found on the OAS intranet page at <http://oamintra.epa.gov/?q=node/18> under FAC-C Program.
- (f) Core courses must be provided by the Department of Defense's Defense Acquisition University (DAU), Federal Acquisition Institute (FAI) or by a DAU approved equivalent provider.
- (g) Business college and university courses that are recognized by DAU in the DAU icatalog as equivalent to core courses may be used to meet training requirements.
- (h) On October 1, 2015, current FAC-C holders certified under the FAC-C legacy programs are grandfathered at their current level of certification, as long as their 80 continuous learning points' requirements are met.
- (i) On October 1, 2015, current FAC-C legacy program level I certified holders may have to take additional FAC-C (Refresh) courses in order to proceed to the next level of certification.
- (j) All FAC- C curriculum courses must be taken in the prescribed order to include course prerequisites.
- (k) Course prerequisites will not be waived for any level of certification, except for CON 090 enrollment in CON 121.
- (l) There are no DAU prerequisite courses waivers for enrollment in a DAU course. CON 090- Federal Acquisition Regulation (FAR) Fundamentals ((DOD) - 4-week course is the first course requirement in the DAWIA curriculum.
- (m)FCN 190-Federal Acquisition Regulation (FAR) Fundamentals (FED) - 2-Week course- will be used in lieu of CON 090 (DOD).
- (n) If an acquisition professional successfully completes CON 090, the course will be accepted in lieu of FCN 190.
- (o) Obtaining a FAC-C does not automatically lead to issuance of a warrant. However, individuals should meet FAC-C certification requirements before being assigned as a warranted contracting officer, see EPAAG Subsection 1.6.4, Contracting Warrant Program for more information.

- (p) FAC-C certifications are cumulative requirements (i.e., an individual seeking certification must meet all the requirements of Level I before obtaining Level II certification and must all meet the requirements of Levels I and II before obtaining Level III certification).
- (q) An employee must meet the appropriate education, experience and training requirements in order to be FAC-C certified. There are no waivers to meeting **ALL** the certification requirements.
- (r) The Federal Acquisition Institute Training Application System (FAITAS) is the official system of records for the FAC-C program.
- (s) For education evaluation, the applicant must provide a transcript. Any transcript that contains a SSN should have the SSN removed before uploading the document into FAITAS. The SSN is part of Personally Identifiable Information (**PII**) and is considered sensitive data under the Privacy Act.
- (t) For experience verification, the applicant must provide a resume with job title, employer, employer location, start and end dates, supervisor, supervisor phone number (if available), and a description of the duties and responsibilities for each position listed on the resume.
Note: Do not upload an SF50 as verification of experience.

1.6.3.5.4 FAC-C (Refresh) Program Certification Requirements

Some courses in the FAC-C (Refresh) program have prerequisites courses beginning with CLC, FAC, or HBS generally do not have prerequisites.

- (a) Individuals applying for a FAC-C certification must complete each certification level in sequence; that is, complete FAC-C Level I, then FAC-C Level II, and finally FAC-C Level III.
- (b) An employee must meet the appropriate education, training, and experience requirements in order to be certified.
- (c) **Education.** The education requirement has not changed. This FAC-C program continues to utilize the education requirement in the Qualification Standard for Contract Specialists (GS-1102s).
- (d) **Experience.** The requirements for experience are generally based upon the Contract Specialist (GS-1102) Qualification Standard. Experience may be time spent on the job in a contracting-related job assignment, either in the private or public sector, which reflects the accumulation of knowledge, skills and abilities during years of progressively

responsible work assignments. There is no exception to the experience requirements and candidates must provide evidence of their experience to the certifying official.

(e) The Tables 2-4 below provide the FAC- C requirements for education and experience.

Table 2 - FAC- C Level I

FAC- C Level I Certification
<p>Education :</p> <p>Completion of a Baccalaureate degree (A transcript is required-See Note)</p> <p>OR</p> <p>Completion of 24 semester hours on an accredited university/college transcript in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management (A transcript is required-See Note).</p> <p>Note: Any transcript that contains a SSN (part of PII) should have the SSN removed before uploading into FAITAS.</p> <p>Experience: 1 year of contracting experience (A resume required- See Notes)</p> <p>Note: For experience verification, the applicant must provide a <u>resume</u> with Name, job title, employer, employer location, start and end dates, supervisor, supervisor phone number, and a description of the duties and responsibilities for each position listed on the resume.</p> <p>Note: Do not upload a SF50 as verification of experience. The SF50 is not acceptable.</p>

Table 3 - FAC- C Level II

FAC- C Level II Certification
<p>Education :</p> <p>Completion of a Baccalaureate degree (A transcript is required-See Note)</p> <p>OR</p> <p>Completion of 24 semester hours on an accredited university/college transcript in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management (A transcript is required-See Note).</p> <p>Note: Any transcript that contains a SSN (part of PII) should have the SSN removed before uploading into FAITAS.</p> <p>Experience: 2 years of contracting experience (A resume is required- See Notes)</p> <p>Note: For experience verification, the applicant must provide a <u>resume</u> with Name, job title, employer, employer location, start and end dates, supervisor, supervisor phone number, and a description of the duties and responsibilities for each position listed on the resume.</p> <p>Note: Do not upload a SF50 as verification of experience. The SF50 is not acceptable.</p>

Table 4 - FAC- C Level III

FAC- C Level III Certification

Education:

Completion of a 4-year course of study leading to a bachelor's degree that included at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative (A transcript is required- See Note).

OR

Completion of a 4-year course of study leading to a bachelor's degree **AND** supplemented by an accredited university/college transcript with at least 24 semester hours in any combination of the following fields: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management (All applicable transcripts are required, See Note).

Note: Any transcript that contains a SSN (part of PII) should have the SSN removed before uploading into FAITAS.

Experience: 4 years of contracting experience (A resume is required- See Notes)

Note: For experience verification, the applicant must provide a resume with Name, job title, employer, employer location, start and end dates, supervisor, supervisor phone number, and a description of the duties and responsibilities for each position listed on the resume.

Note: Do not upload a SF50 as verification of experience. The SF50 is not acceptable.

- (f) Individuals applying for an initial certification must have the required education, experience, and complete all training- core and prerequisite courses- listed on fai.gov under the FAC-C Course Prerequisites chart to meet the certification requirements for each FAC-C level. All courses must be taken in the order as listed on FAI in the FAC-C Course Prerequisites chart for each FAC-C Level.
- (g) An individual that completed FAC-C Level I certifications under the FAC-C legacy program applying for FAC-C Level II certification under the FAC-C (Refresh) program must have the required education, experience, AND must complete the CON 170 (Fundamentals of Cost and Price Analysis) in addition to all other courses listed on FAI under the FAC-C Course Prerequisites Chart listing for FAC-C Level II. All courses must be taken in the order as listed on FAI in the FAC-C Course Prerequisites chart.
- (h) An individual that completed FAC-C Level I and Level II certifications under the FAC-C legacy program applying for FAC-C Level III certification under the FAC-C (Refresh) program must have the required education, experience, and complete CON 360 (Contracting for Decision Makers); HBS 435 (Project Management) or another HBS Module other than HBS 428 for 2-hours; and 32 Hours of Electives.
- (i) Electives may not be the same electives used as part of the FAC-C Level I and Level II in the legacy program certifications and must not be more than 2-years old from the time of FAC- C Level III application submission.

- (j) The 32 hours of electives may be one course or a series of courses. Each course shall be at least eight hours in length and can be classroom, online, or a combination of the two.
- (k) If a course requirement is not listed as graduated in an individual's FAITAS training history file, the individual must upload the applicable course completion certificate as supporting documentation.
- (l) Workforce members taking CON 170 (Fundamentals of Cost and Price Analysis), CON 270 (Intermediate Cost and Price Analysis), CON 280 Source Selection and Administration of Service Contracts), CON 290 Negotiation and Administration of Supply Contracts), or CON 370 (Advanced Contract Pricing) for continuous learning purposes are responsible for ensuring they (a) have reviewed the learning objectives for the course, and (b) have the required knowledge, skills and abilities to successfully perform in the class.

The Defense Acquisition Workforce Improvement Act (DAWIA) contracting certification and FAC-C certification are parallel and both have prerequisites for courses. The DAU and FAI may have different course prerequisites for the same courses. Contracting professionals may take courses directly from DAU on a space-available basis. Nevertheless, the contracting professional is responsible for ensuring he or she meets the DAU prerequisites before registering for a course under the DAU curriculum.

This information will be available at: <http://oamintra.epa.gov/node/226> under FAC-C Refresh Program Certification Requirements.

The Course Prerequisites Chart is located <https://www.fai.gov/drupal/certification/contracting-fac-c> under Course Prerequisites.

1.6.3.5.5 Requesting Certification

To request certification, applicants must provide evidence of satisfactory completion of FAC-C courses, a resume, and academic transcript from an accredited college or university for each level of certification requested. All applications for FAC-C certifications must be completed in the Federal Acquisition Institute Training Application System (FAITAS) found at <http://www.fai.gov/drupal/> or <https://www.atrs.army.mil/faitas/External/Login/>.

1.6.3.5.6 Fulfillment Process

The FAC-C fulfillment process only applies to fulfillment of CON 100, *Shaping Smart Business Arrangements*. To fulfill CON 100, the employee should focus on explaining their “experience and understanding of making business decisions to support contracting mission requirements and the types of business arrangements and procurement alternatives commonly used to support those decisions.”

Fulfillment process requirements:

- (a) Self-Assessment: To document fulfillment of a mandatory course based on experience, education, or alternate training an employee must first refer to the contracting competency model, which consists of 52 technical elements and 10 professional elements. The contracting competencies are available to view or download from the internet at <http://www.fai.gov/drupal/certification/contracting-fac-c>. Also, an individual must describe how the competencies were met based on the course description for the requested and a course of fulfillment. CON 100 is the only course available for fulfillment, course description can be found under “Training Courses and Schedules” at <http://icatalog.dau.mil/onlinecatalog/tabnav.aspx>.
- (b) The employee must complete the application for fulfillment through FAITAS Fulfillment/Equivalent Module indicating how course competencies have been met based on the course description and the contracting competency model.
- (c) Applicants must submit to their supervisor the request in FAITAS, with supporting evidence to show the required competencies for the CON 100 course were attained through alternative training, experience, education, certification by another organization, or other developmental activities to align with the requested fulfillment course description. The supervisor must review the request for sufficiency and recommend or deny approval of the request.
- (d) Approval of fulfillment requests resides with the SPE; however, this responsibility has been delegated to the ACM.

1.6.3.5.7 Reciprocity With Other Certifications

- (a) *DOD Defense Acquisition Workforce Improvement Act (DAWIA) certification* – A DAWIA certification in contracting is equivalent to a FAC-C at the same certification level, provided the education and continuous learning criteria for FAC-C are met. A FAC-C does not necessarily meet the requirements for the DAWIA certification. Determination of equivalency will be made by the DOD on an individual basis.
- (b) *Federal Acquisition Certification for Contracting Officer’s Representative (FAC-COR)* – A valid, (current) FAC-C Level I or II is considered to have met the FAC-COR requirements for Level II. A valid, current FAC-C Level III is considered to have met the FAC-COR requirements for Level III.
- (c) All requests for FAC-COR certification using FAC-C reciprocity must be requested in FAITAS. Under training Supporting Documents: **(required)**, attach the FAC-C certification as supporting documentation, and under experience Supporting Documents: **(required)**, attach a resume as supporting documentation.

1.6.3.5.8 Continuous Learning

- (a) To be effective and maintain currency in their field, acquisition workforce personnel must continue to learn throughout their careers. To maintain a FAC-C, contracting professionals are required to earn continuous learning points (CLPs) to reflect skills currency every two years, beginning from the date of certification. In accordance with the OFPP Policy Letter 05-01, employees must meet the following requirements:
- (b) All OPM Contracting Series GS-1102 and GS-1105 employees must earn 80 continuous learning points (CLPs) every two years.
- (c) All Contracting Officer employees with warrants above the micropurchase threshold must earn 80 continuous learning points (CLPs) every two years. This requirement does not apply to OSCs and BPA Call Offering, See EPAAG 1.6.4 Contracting Officers Warrant Program.
- (d) GS-1102s employees hired with a waiver and those serving under "Grandfathering" -- The Exception Provisions for Series 1102 qualification standards with no FAC-C certification, must complete 80 CLPs every two years. Exemption to this requirement shall be granted by the SPE; for example, those 1102s assigned full-time union duties.
- (e) EPA's On-Scene-Coordinators (OSC's) are FAC-COR certified and must earn 40 CLPs every two years. FAC-C does not apply to the OSCs.
- (f) It is the contracting professional's responsibility to ensure that his/her continuous learning requirements are met. The supervisor shall verify and ensure that employees meet continuous learning requirements. FAITAS sends alert notifications to each FAC-C holder and supervisor from 180 to 5 days before the FAC-C lapses.
- (g) It is the supervisor's responsibility to monitor and ensure completion of continuous learning requirement for all assigned employees, including those who do not hold a FAC-C due to a hiring waiver and under the "Grandfathering -- The Exception Provisions."
- (h) The ACM shall monitor the continuous learning requirements for the Agency required FAC-C holders registered in FAITAS to ensure they meet these requirements before the end of the recertification period.
- (i) Continuous learning points can be awarded for training classes, participation in professional organizations and associated events, publication of articles, and participation in experiential activities. Contracting professionals are encouraged to take new classes added to the contracting certification curriculum even after certification. If an individual fails to obtain the continuous learning points (CLPs) requirement prior to the end of a two-year recertification cycle, the FAC-C will be revoked (aka expired/lapsed).
- (j) EPA continuous learning guidance is available on the OAS training home page <http://oamintra.epa.gov/?q=node/18> under "Continuous Learning (CLPs)." Individuals

and their supervisors are responsible for maintaining continuous learning records in FAITAS, which is available on FAI's website, <http://www.fai.gov>.

- (k) CLP courses, events, and activities must be acquisition specific and acquisition technical related that align with the Contracting Competency Model's-52 Technical Elements, 10 Professional Elements, and assigned duties.
- (l) All Agency Acquisition Workforce members must track their CLPs through the Federal Acquisition Institute Training Application System (FAITAS) found at <http://www.fai.gov/drupal/> or <https://www.atrrs.army.mil/faitas/External/Login/>. Immediate supervisors of Acquisition Workforce Members are responsible for confirming training, education, and experience entered into FAITAS. The OAS, Federal Acquisition Institute (FAI) and OFPP (if requested) are responsible for auditing information entered into FAITAS.

1.6.3.5.9 Reinstatement of a Lapsed FAC-C Certification

- (a) If an individual fails to obtain the 80 CLP requirements or submit the Continuous Learning Achievement Request to keep the certification current, the FAC-C will lapse (aka expire/revoke).
- (b) To reinstate a lapsed (expired/ revoked) FAC-C, the individual must complete the EPA prescribed courses in Table 5 below, upload a transcript (remove PII), current resume, copy of current expired/revoked certification certificate, and submit a new certification request in FAITAS for the same FAC-C level of certification. In the remarks section, type the statement "*This is a Reinstatement Request.*"
- (c) This is online no cost training. The agency prescribed training courses to reinstate a FAC-C are subject to change by the SPE in accordance with DAU and FAI online curriculum updates and changes.
- (d) Updates to this training will be posted on the OAS training page at <http://oamintra.epa.gov/node/226> under FAC-C Refresh Program Certification Requirements.

Table 5	FAC- C Reinstatement Courses For Revoked/Expired Certification		
Course Number	Course Title	Location	Number of CLPS
CON 121	Contract Planning	Online	12
CON 124	Contract Execution	Online	13
CON 127	Contract Management	Online	10
CON 260 A	The Small Business Program, Part A	Online	10

CLC 013	Service Acquisition	Online	3
CLC 057	Performance-Based Payment	Online	4
CLC 065	Suspension and Debarment	Online	1
CLC 104	Analyzing Profit or Fee	Online	1
CLC 108	Strategic Sourcing Overview	Online	5
CLC 110	Spend Analysis Strategies	Online	4
FAC 021	Price Analysis	Online	4
FAC 026	Cost Analysis	Online	4
FAC 028	GSA Schedules & Sustainable Acquisition	Online	1
FAC 029	GSA Schedules vs Open Market	Online	2
FAC 045	Federal Procurement Data System – Next Generation (FPDSW-NG)	Online	2
Harvard Business Module (HBS) 428	Negotiating	Online	2
Harvard Business Module (HBS) 435	Project Management	Online	2
Total	Classroom-0 hours/0 days	Online	80

1.6.3.5.10 Core-Plus Specialization Certification

- (a) **General.** The purpose of the FAC-C core-plus specialization is to establish additional training, experience and continuous learning requirements for FAC-C certified personnel who manage specific investments requiring specialized knowledge, skills and abilities. Core-plus specializations will be recommended by the OMB Contracting Functional Advisory Board, approved by OFPP, and maintained by FAI at www.fai.gov. The IT core-plus specialization is the first one available for certification.
- (b) **Assignment.** Assignment of personnel remains a management function.

- (c) **Certification Levels.** Contracting professionals requiring FAC-C core-plus specialization must also be core FAC-C certified as described below. The ability to specialize implies a demonstrated level of skill beyond the entry level. For this reason, a FAC-C core-plus specialization will only be granted to holders of Level II and Level III FAC-Cs. When advancing from FAC-C Level II to FAC Level III, the FAC-C carries with it the core-plus specialization, assuming the core-plus continuous learning requirements have been met.
- (d) **Competencies and Training.** As with FAC-C, an applicant must satisfy the core-plus competency requirements through education, training, other relevant certification programs, or demonstration and documentation through fulfillment of knowledge, skills, and abilities. Core-plus competencies will be updated periodically to meet current and future acquisition workforce requirements and to reflect emerging trends in the government's acquisition practices. The primary outcome of training is not to require a specific number of hours, but to provide an instructional approach best suited to deliver the learning outcomes that align to the competencies. To obtain a FAC-C core-plus specialization, agencies may require additional competency requirements beyond the core competencies established by FAI for a given core-plus area.

The IT-specific outcomes were established based upon the tenets in the 25-Point Implementation Plan to Reform Federal Information Technology Management. Training requirements for the IT core-plus certification are identified with each competency in the table below. All certification requests must be completed in FAITAS. Table 6 lists IT Competency/Training, Performance Outcome, and IT Specific Outcome for the IT core-plus specialization.

Table 6 - IT Competency/Training, Performance Outcome, and IT Specific Outcome

Competency /Training	Performance Outcome	IT Specific Outcome
<u>Acquisition Strategy</u> Mid and Senior Level - 24 hours Information Technology (IT) Acquisition – onsite (24 hours)	Comprehend principles and methods for developing an integrated acquisition management plan that describes the business, technical, and support strategies, including the relationship between the acquisition phases, work efforts, and key program events (for example, decision points, contract awards, test activities).	Comprehend and apply principles of modular development to support IT development and delivery
<u>Contracting / Procurement</u> Mid and Senior-17.25 hours Agile Acquisition (16 hours) - onsite Buying Accessible E & IT-508 Compliance (1.25 CLPs): This training can be found on the Section508.gov website at https://www.section508.gov/ under 508 Universe Training	Distinguish among the various types of contracts, techniques for contracting, and participate in contract negotiation and administration.	Apply principles of modular contracting to support system development; identify the best contract strategies to support project and key federal IT strategic goals (e.g. Cloud computing, Data Center Consolidation, IT as a service, etc.)

<p><u>Product Evaluation</u></p> <p>Register for this course at https://www.atrrs.army.mil/faitas/External/Login/ (Manage Career-Training-Search for Training-Continuous Learning Modules.</p> <p>Mid and senior level- 12.5 hours</p> <p>CLC 020 Commercial Item Determination (3.5 CLPs)- online CLC 108 Strategic Sourcing Overview (1 CLPs)- online CLC 110 Spend Analysis Strategies (4 CLPs) online FAC 039 GSA's Governmentwide Acquisition Contracts (GWACs) for IT Service – (4 CLPs) – online</p>	<p>Distinguish methods for researching and analyzing external products to determine their potential for meeting organizational standards and business needs.</p>	<p>Identify and analyze COTS technology solutions and evaluate associated business process reengineering efforts to adapt the organization to COTS solutions.</p>
<p><u>Cost-Benefit Analysis</u></p> <p>Mid and senior level – 20.25 hours</p> <p>Register for this course at https://www.atrrs.army.mil/faitas/External/Login/ (Manage Career-Training-Search for Training-Continuous Learning Modules.</p> <p>HBS 417 Finance Essentials (2-CLPs) - online</p> <p>CLB 023 Software Cost Estimating (5-CLPs) –online</p> <p>CLB 024 Cost Risk Analysis Introduction (3 CLPs) – online</p> <p>CLC 131 Commercial Item Pricing- (1 CLP)- online</p> <p>CLC 056 Analyzing Contract Costs (17 CLPs)- online</p>	<p>Comprehend the principles and methods of cost-benefit analysis, including the time value of money, present value concepts, and quantifying tangible and intangible benefits.</p>	<p>Ability to construct, quantify and strategic IT benefits to customers and management, along with the costs of inaction with regard to IT (e.g. Long-term costs of not upgrading, failure to maintain compatibility, et</p>

<p><u>Earned Value Management</u></p> <p>Register for this course at https://www.atrrs.army.mil/faitas/External/Login/ (Manage Career-Training-Search for Training-Continuous Learning Modules.</p> <p>Mid-level -2 hours</p> <p>CLV 016 Introduction to Earned Value Management – (1 CLP) - online</p> <p>CLV 019 Estimate at Completion- (1 CLP)</p> <p>Senior Level- 7 hours</p> <p>CLV 016 Introduction to Earned Value Management – (1 CLP)- online</p> <p>CLV 017 Performance Measurement Baseline- (5 CLPs)- online</p> <p>CLV 019 Estimate at Completion- (1 CLP)</p>	<p>Comprehend the principles, methods, and techniques of earned value management</p>	<p>Understand and apply Earned Value Management principles to modular development efforts.</p>
<p><u>Project Management</u></p> <p>Register for this course at https://www.atrrs.army.mil/faitas/External/Login/ (Manage Career-Training-Search for Training-Continuous Learning Modules.</p> <p>Senior Level</p> <p>HBS 435 Project Management–(2 CLPs)- online</p>	<p>Operationalize the principles, methods, or tools for developing, scheduling, coordinating, and managing projects and resources, including monitoring and inspecting costs, work, and contractor performance.</p>	<p>Apply modular development Project Management principles to support rapid delivery schedules; integrate IT projects with larger IT Architecture initiatives.</p>

Note: Any courses taken as mandatory training under Section 1.6.4- Contract Warrant Program will not have to be retaken to qualify for core-plus certification.

Note: Prescribed online training is subject to change by the SPE in accordance with DAU and FAI online curriculum updates and changes. The IT core-plus specialization training can be found at: <http://oamintra.epa.gov/node/226>. This is no cost training.

(e) **Experience.** At least two years of contracting experience supporting projects and/or

programs within the given core-plus area is typically required to obtain the FAC-C core-plus specialization. Core-plus experience can be considered in obtaining core FAC-C, or may be in addition to that experience.

- (f) **Continuous Learning.** As required by core FAC-C, FAC-C core-plus professionals are required to earn 80 CLPs of skills currency every two years. Maintenance of CLPs is shared between the core-plus area and the core FAC-C continuous learning requirement. At least 20 of the 80 CLPs required must be dedicated to continuous learning in topics associated with the core-plus area. If an individual fails to obtain the 80 CLPs requirement, the core FAC-C and core-plus specialization will simultaneously lapse. To reinstate the certification status after a certification has lapsed, the 80 CLPs requirement must be completed using the reinstatement procedures for FAC-C in this policy and maintain the requirement for the 20 of the 80 CLPs dedicated to continuous learning in topics associated with the core-plus area.

1.6.3.5.11 Oversight and Federal Acquisition Institute Training Application System (FAITAS)

Oversight of the FAC-C program has been delegated by the SPE to the Acquisition Career Manager (ACM) - also known as the Agency Certification Manager (ACM). The ACM is also the Agency's FAITAS System Administrator; and, this role is not re-delegable. The ACM is a Federal employee of OAS who is formally appointed by the SPE with the responsibility for strategic acquisition human capital management; and management of the Agency's acquisition workforce training, career development, and certification programs in accordance with the requirements of the Services Acquisition Reform Act of 2003 (SARA) (P.L. 108-136), OFPP Policy Letter 05-01, *Developing and Managing the Acquisition Workforce* (April 15, 2005); section 4307(a) of the Clinger-Cohen Act (40 U.S.C. §1401(3)); and amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433).

For all civilian agencies, FAITAS is the official system of records for the FAC-C program. All contracting professionals were required to be registered in FAITAS by January 1, 2014, per September 3, 2013 OFPP memorandum, "Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce," available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/increasing-efficiencies-in-the-training-development-and-management-of-the-acquisition-workforce.pdf>. Individuals are responsible for uploading and maintaining certification supporting documentation in FAITAS.

The Agency Certification Manager (ACM) will run FAITAS reports on a regular basis to monitor FAC-C certification status and approve/disapprove pending certification requests.

The Bureau Certification Manager (BCM) will publish a list of FAC-Cs with current certification in FAITAS on <http://oamintra.epa.gov/node/421>. At a minimum, this list will be updated monthly.

Contracting professional FAC-C holders must enter and update their training information in FAITAS in a timely manner to reflect current training and certification status. If FAC-C holders experience problems with FAITAS, an online e-help desk ticket must be submitted to FAI at

<http://www.fai.gov/drupal/> (FAITAS- Login- Help-Contact Us-**FAI Help Desk**: Monday - Friday, 7:30 a.m. - 5:30 p.m. or Call: (703) 752-9604- [FAI Help Desk Ticket](#).

APPENDIX 1.6.3-A

**Request for FAC-C Training
Extension**

MEMORANDUM

SUBJECT: Request for FAC-C Training Extension for _____.

FROM: Supervisor
Name of Branch

THUR: Acquisition Career Manager

TO: XXXXXXXXX, Director
Office Acquisition Solutions/Senior
Procurement Executive

Request for FAC-C Training Extension for XXXX XXXXX to complete the FAC-C training requirement for FAC-C Level _____. This 12 month extension request in meeting the certification requirements is in accordance with the requirement of EPAAG Section 1.6.3, Contracting Series Training and Certification. Certificates of completed training and certifications are attached. The estimated date for completion of all the FAC-C requirements to meet the appropriate grade level is (**month, date, year**).

Jane Smith

Jane Smith
Supervisory Contracting Officer



APPENDIX 1.6.3-B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

FAC- C Training Request Extension Endorsement

Employee: _____

This extension decision, given in my capacity as the Senior Procurement Executive (SPE) for the Environmental Protection Agency, is in response to the Request for FAC-C Training Extension Memorandum with its accompanying documentation from XXXX, Section Chief XXXX, Environment Protection Agency, Region XX, dated **(month, date, and year)**. This 12 month extension request in meeting the certification requirements is in accordance with the requirement of EPAAG Section 1.6.3, Contracting Series Training and Certification. The required date for completion of all the FAC-C requirements for the appropriate grade level is **(month, date, year)**.

Meeting the FAC-C requirements is in accordance with Section 4307(a) of the Clinger-Cohen Act (40 U.S.C. §1401(3), amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433); Services Acquisition Reform Act of 2003, Public Law 108-136; OFPP Policy Letter 05-01, "Developing and Managing the Acquisition Workforce," paragraph 8(c) (April 15, 2005); OFPP Memorandum, "Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce" (September 3, 2013); and OFPP Memorandum, "Revisions to the Federal Acquisition Certification in Contracting (FAC-C)" (May 7, 2014). *A FAC-C does not entitle an employee to promotion, delegation of contract warrant authority, special assignment, or any other action that is management discretion.*

____ Approved

____ Not Approved

Reason:

XXXXXXXXX, Director
Office Acquisition Solutions/SPE
U.S. Environmental Protection Agency



APPENDIX 1.6.3-C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

Hiring Waiver Endorsement

Applicant: _____

This endorsement decision, given in my capacity as the Senior Procurement Executive (SPE) for the Environmental Protection Agency, is in response to the Request for Waiver Memorandum with its accompanying documentation from XXXX, Section Chief XXXX, Environment Protection Agency, Region XX, dated **(month, date, and year)**. This waiver request is in accordance with the Clinger-Cohen Act of 1996, the Office of Federal Procurement Policy (OFPP), and the Office of Personnel Management (OPM), allowing the SPE to waive **(insert type waiver requested-** the education, training, or education and training requirements) for an applicant hired in a GS-13, 1102 position and above based on that person's demonstrated analytical and decision making capabilities, job performance, and qualifying experience. The individual must complete 80 hours of continuous learning every two years in accordance with the EPA Acquisition Guide Section 1.6.3 - Contracting Series Training and Certification Program.

___ Approved, with special hiring requirement for completion of FAC-C level for appropriate grade in accordance with EPA Acquisition Guide Section 1.6.3- Contracting Series Training and Certification Program.

___ Approved, without special hiring requirement for completion of FAC-C.

Reason:

___ Not Approved

Reason:

XXXXXXXXXX, Director
Office Acquisition Solutions/SPE
U.S. Environmental Protection Agency

**EPA Acquisition Guide (EPAAG) Interim Policy Notice no. 20-01
Effective June 1, 2019**

Subsection 1.6.4 - Contracting Officer Warrant Program

1.6.4.1 Purpose.

The purpose of this subsection is to establish specific authorities, limitations, certification, and training standards for Contracting Officers (COs) who are granted contracting warrant authority for acquisitions above the micro-purchase threshold and BPA Call Ordering Officers on behalf of the Environmental Protection Agency (EPA).

Note: This policy is not applicable to warrants issued with a micro-purchase threshold limit under the purchase card program. EPAAG Subsection 13.3.1 addresses the use of the Government-wide Commercial purchase card at EPA.

1.6.4.2 Background.

The Contracting Officer Warrant Program (COWP) is established in accordance with the Services Acquisition Reform Act of 2003 (SARA) (P.L. 108-136), Office of Federal Procurement Policy's (OFPP's) government-wide framework for training, education, and experience as set forth in *OFPP Policy Letter 05-01, Developing and Managing the Acquisition Workforce*, April 15, 2005; OFPP Memorandum, *Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce*, September 3, 2013; and OFPP Memorandum, *Revisions to the Federal Acquisition Certification in Contracting (FAC-C)*, May 7, 2014.

In accordance with OFPP Memorandum, *Revisions to the Federal Acquisition Certification in Contracting (FAC-C)*, May 7, 2014, members of the workforce holding Contracting Officer (CO) warrants as of the effective date of this program, regardless of GS series, must be certified at an appropriate level, in accordance with this policy. Furthermore, all contracting professionals issued an unlimited level warrant must be FAC-C Level III certified, unless, the employee is granted an approved Contracting Officer Warrant waiver by the SPE. For FAC-C requirements, refer to EPAAG, Subsection Section 1.6.3 - Contracting Series Training and Certification Program.

1.6.4.3 Authority/Applicability.

Pursuant to the Federal Acquisition Regulation (FAR) Subpart 1.6, the authority to contract for authorized supplies and services is vested in the Agency Head - EPA Administrator.

- (a) The Administrator of EPA delegates contracting authority to the EPA's Chief Acquisition Officer (Assistant Administrator for the Office of Mission Support (OMS)), who delegates this authority to the EPA Senior Procurement Executive (SPE) who is the (Director, Office of Acquisition Solutions (OAS)).

- (b) The SPE is responsible for establishing policies and procedures for the effective management (including education, training, federal certification, career development, and warrants) of the Agency's Contracting Officers (COs). The role of the SPE is non-delegable. Questions concerning this policy and procedures should be referred to the Acquisition Career Manager (ACM) within OAS.
- (c) The Director, of OAS is the *Head of Contracting Activity* (HCA) who delegates acquisition authority and exercises management and oversight responsibilities for acquisition processes and warrant appointment for the agency. The Director, of OAS may re-delegate the HCA authority to a designated representative.
- (d) The HCA may further delegate acquisition authority to exercise management and oversight responsibilities for acquisition processes and warrant appointment to an appointing official who appoints Contracting Officers (COs) within their respective contracting office.
- (e) All COs' warrant authority is restricted to using Federal and Agency strategic sourcing contracts as a mandatory first source before considering other acquisition strategies. COs must comply with EPAAG Subsection 8.0.100, *Mandatory Requirements for Use of Common Contract Solutions*. COs that do not comply with this policy may have their warrants revoked.
- (f) All COs, regardless of their series (except OSCs) must be certified at an appropriate level to support the Agency acquisition mission in accordance with this policy, section 1.6.4.5.2 - COWP Warrant Levels, Dollar Thresholds, and FAC-C Levels, and Recipients.
- (g) Those COs not required to be certified under the previous policy shall be given a period of 24 months to complete their certification requirements from the effective date of EPA's policy.
- (h) This policy does not apply to Delivery or Task Ordering Officers. These individuals serve as Contracting Officer's Representatives (CORs) appointed in writing by cognizant COs and must comply with the requirements in EPAAG Subsection 1.6.5 - Contracting Officer's Representatives Three-Tiered Program, to maintain their FAC-COR Level certification in a current status. Delivery Order (DO) COR - A COR appointed to an indefinite-delivery type contract or other acquisition instrument where contractor supplies are ordered through separately funded DOs awarded by the CO. This term includes CORs functioning on orders for supplies under GSA MAS contracts, GWACs, and MACs. Task Order (TO) COR - A COR appointed to an indefinite-delivery type contract or other acquisition instrument where contractor tasks or services are ordered through separately funded TOs and awarded by the CO. This term includes CORs functioning on orders for services under GSA MAS Contracts and GWACs.
- (i) OSCs serve as Contracting Officer's Representatives (CORs) appointed in writing by cognizant COs and must comply with the requirements in EPAAG Subsection 1.6.5 - *Contracting Officer's Representatives Three-Tiered Program*, to maintain their FAC-COR Level II certification and associated contingency warrant in a current status.

- (j) Financial Analysis & Oversight Branch contracting officers (FACOs) must be FAC-C Level II certified, at minimum. These COs have warrant authority limited to the negotiation of indirect cost rates (both provisional and final) and the issuance of CO final decisions regarding such negotiations.
- (k) This policy does not apply to individuals assigned to the Financial Analysis & Oversight Branch whose authority is limited to financially administering contracts and does not include authority to negotiate or make final negotiation decisions on indirect cost rates; or to enter into or terminate contracts.
- (l) Blanket Purchase Agreement (BPA) Call Officers with warrant authority up to \$3,500 but, not to exceed the \$100,000 (per individual BPA) over a three-year period must successfully complete the CON 237- *Simplified Acquisition Procedures Course*.
- (m) All CO warrants issued under the authority of this policy, including OSC warrants and BPA call ordering officers, shall be entered into the Federal Acquisition Institute Training Application System (FAITAS) - pursuant to 41 U.S.C. §1704(e) and OMB OFPP memorandum, *Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce*, September 2013.
- (n) Possession of a warrant does not entitle an employee to promotion, special assignment, or any other action that is at management discretion.

1.6.4.4 Definitions.

Acquisition Career Manager (ACM) - also known as the Agency Certification Manager (ACM), is a Federal employee of OAS who is formally appointed by the SPE with the responsibility for strategic acquisition human capital management; and management of the Agency's acquisition workforce training, career development, and certification programs in accordance with the requirements of the Services Acquisition Reform Act of 2003 (SARA) (P.L. 108-136), OFPP Policy Letter 05-01, *Developing and Managing the Acquisition Workforce* (April 15, 2005); section 4307(a) of the Clinger-Cohen Act (40 U.S.C. §1401(3)); and amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433).

Appointing Official. The appointing official is an Agency employee with delegated authority by the HCA to appoint contracting officers. Appointing officials are responsible for ensuring the COs they appoint meet the requirements of the Federal Acquisition Regulation 1.603 and any Agency specific requirements in this section.

Certificate of Appointment (Warrant). A Certificate of Appointment, Standard Form (SF) 1402, is used to grant contracting authority to qualified individuals. It is often referred to as a "warrant." The dollar value limit of a CO's authority is the maximum amount that may be obligated in any single contract action. The terms "warrant" and "certificate of appointment" will be used interchangeably throughout this document. Each CO shall display the SF-1402 in their workspace so that it is readily observable to the public, and provide a copy of it to

interested parties, offerors, and contractors upon request.

Federal Acquisition Institute Training Application System (FAITAS). FAITAS is the system for all federal civilian Agencies to manage their acquisition workforce, including federal acquisition certification requests, training requests, continuous learning requests, continuous learning achievement requests, career development, and warrants.

Nominating Official. The nominating official is the employee's immediate supervisor.

On-Scene Coordinators (OSC). The EPA On-Scene Coordinator (OSC) maintains a contingency warrant to support environmental and human health threats pursuant to the National Contingency Plan (NCP). CO authority for OSCs is reserved for EPA personnel whose responsibilities include obtaining the services necessary to respond to emergency and time-critical releases or potential releases of hazardous substances, pollutants, contaminants, and petroleum products that present an imminent and substantial threat to the public health, welfare, or the environment.

1.6.4.5 Policy.

COs have substantial involvement in procuring goods or services from federal and nonfederal sources including the following functions: preparing and issuing purchase orders, issuing requests for quotations or solicitations, evaluating bids or proposals, selecting sources, price/cost analysis, participating in price negotiations, and contract award and administration. The EPA COWP establishes the criteria for the appointment and termination of EPA CO warrant authority for acquisitions above the micro-purchase threshold. This ensures that EPA follows a standardized process for qualifying and appointing individuals as COs based on the organization's needs for contracting authority.

Employees with delegated contracting authority are the only individuals legally authorized to bind the Government by executing contracts and signing determinations and findings and other contract documentation required by the FAR. EPA is committed to ensuring that only highly qualified individuals become warranted contracting officers. FAR 1.603 describes the requirements for the selection, appointment, and termination of COs' warrant. Limitations of authority are set for each CO based on factors such as experience in acquisition, education, knowledge of acquisition methods, satisfactory completion of required acquisition training and continuous learning courses, understanding of acquisition laws and regulations, business acumen, and personal integrity and professional conduct in exercising acquisition responsibilities.

1.6.4.5.1 Conduct of Contracting Officers and Contract Specialists.

- (a) As described in FAR 1.602-2, warranted COs are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. No contract shall be entered into unless the CO ensures that all requirements of law, executive orders, regulations, EPA acquisition policies, and all other

applicable procedures, including the clearances and approvals of EPAAG 1.6.1, have been met.

- (b) *Contract Specialists*. The CO may delegate certain duties and responsibilities in the acquisition process to a Contract Specialist (CS). The CS may generally perform most of the same duties as a CO; nevertheless, an unwarranted CS does not have the authority to obligate the Government in terms of contracts or funds or make formal CO's determinations or decisions.

The duties commonly assigned to the CS include:

- (1) Performing pre-award functions to include planning the acquisition strategy and preparing solicitation documentation;
 - (2) Performing contract award functions to include evaluating responses, negotiating terms and conditions, and preparing award documentation; and
 - (3) Performing post-award functions to include preparing contract modifications, monitoring contract performance, and closing out contracts.
- (c) The CO reviews the work product of the CS and is the final authority on all matters related to the acquisition. While the CO may receive advice and support from the CS or other specialists in law, audit, engineering, transportation, finance, or other functions, the CO remains the individual who is responsible and accountable for contracts.
 - (d) To ensure quality of documents, it is a good practice for COs that prepare their own work products without the assistance of a CS to obtain a peer review or higher-level review before executing a contract action such as contract/order award, modification, or a CO's determination or decision. For more information on peer review and higher-level reviews, refer to EPAAG Subsection 1.6.1 - Reviews, Concurrences, and Checklists.
 - (e) All contract COs/CSs must follow the policies and procedures set forth in FAR Part 3 and the Ethics Reform Act of 1989. COs and CSs working in contracting operations, above must have a current OGE Form 450, Confidential Financial Disclosure Report, on file with their Deputy Ethics Official (DEO).

1.6.4.5.2 COWP Warrant Types, Warrant Authority Levels, FAC-C Level Requirement, and Recipient

All designated appointing officials must consider the warrant candidate's relevant training and experience in determining the candidate's capability to assume CO responsibilities. The SPE/HCA may further limit warrant authorities and dollar thresholds.

Table 1 provides the COWP warrant types, warrant authority level, and FAC-C level requirements, and recipient.

Table 1 Warrant Type, Warrant Authority, FAC-C Level Requirement, and Recipient

Warrant Type	Warrant Authority Level	FAC-C Level Requirement	Recipient
Advance (Level IV)	Designated Approving Officials	III	Division Directors, GS-1102-15
Simplified Acquisition (SAP) (Level I)	Up to the Simplified Acquisition Threshold	I	SACOs (regardless of series); GS-1105s; GS- 1102-12
Basic (Level II-A)	Up to \$5 M	II	GS-1102-12 with more than 3 years' experience as a GS-1102-12; GS-1102-13 with less than 3-years' experience as GS-1102-13* See Note
Intermediate (Level II-B)	Up to \$10 M	II	GS-1102-12 with more than 3 years' experience as a GS-1102-12; GS-1102-13 with 3 or more years' experience as GS-1102-13* See Note
Senior (Level III)	Unlimited	III	GS-1102-14; GS-1102-15
Special	Negotiation of Indirect Cost Rates	II	Indirect Cost Rates COs
Contingency	Not to Exceed \$200K	Not Required (Required: FAC-COR Level II Certification)	OSC
BPA Ordering Officer	Authority up to \$3,500 but, not to exceed the \$100,000 over a three-year period	Not Required (Required: CON 237-Simplified Acquisition Procedures Course)	BPACOO

Note: EPA use of the Government purchase card for micro-purchases and as a CO payment method shall follow the instructions in EPAAG 13.3.1.

Note: Any 1102 with an existing warrant prior to the issuance of this policy is grandfathered at the current warrant level, as long the employee maintains the warrant in accordance with the FAR and this policy.

1.6.4.5.3 Appointing Officials.

The appointing official is responsible for appointing COs in the various EPA organizations. The following Tables provide the appointing official and warrant type responsibility.

Table 1

Appointing Official	Warrant Type
HCA - Director, OAS or Designated Representative	Warrants for Designated Approving Officials (Advance- Level IV) – Division Directors

Table 2

Appointing Official	Warrant Type
OAS Division Directors	Commercial Governmentwide Purchase Card; Simplified Acquisition (SAP) - (Level I); Basic- (Level IIA); Intermediate- (Level II-B); Senior- (Level III); Special; Contingency as applicable in Charts 1 through 7.

(a) The appointing official for SACO warrants, in accordance with this policy, is the Division Director of the Policy and Training Operation Division, effective June 1, 2019 (all current SACO warrants remain valid). PTOD as noted in the charts below will provide customer support to SACOs regarding SACO Threshold reviews, acquisition policy issues and warrant issues. The appointing official may limit purchasing authority based upon categories (e.g., services, construction, etc.), acquisition vehicle, contracting method or type, and the knowledge, skill, or experience of the individual. Any such operational restrictions must be specifically stated on the warrant. The warrant request process can be found in section 1.6.4.5.6 of this policy.

(b) Indirect Cost Rates Contracting Officers negotiates indirect cost rates; conducts contract auditing; and perform contract cost/price analysis in support of the agency's acquisition mission. These COs warrant authority does not confer the authority to enter into, administer, or terminate contracts and to make related determinations and findings.

(c) Charts 1-7 listed below indicate the appointing official responsible for appointing COs in the various EPA organizations. This chart also designates the appointing official who appoints ordering officers above the micro-purchase level.

(d) CO appointments for program office employees will be made by the Appointing Official for the OAS division that processes that organization's acquisitions. For example, if the Information Technology Acquisition Division (ITAD), formerly RTP Procurement Operations Division (RTPPOD) awards the organization's contracts, then the Appointing Official at ITAD would appoint COs for that organization.

(e) The OAS division that provides acquisition support for a particular organization will also appoint COs in that organization.

(f) Consequently, it is understood that if any changes in OAS organizational structure occurs and

impacts the following charts in organizational titles, successor organizations, or change in OAS division providing acquisition support, the OAS division that provides support to that organization, notwithstanding the charts below, is authorized to appoint contracting officers for that organization.

(g) In the event of a conflict over which OAS division is authorized to appoint contracting officers for a particular organization, the Director, OAS, will make the final decision.

Chart 1

Appointing Official	Warrant Type
Director, Office of Acquisition Management	All Advance- Level IV

Chart 2

Appointing Official	Warrant Type
Director, Policy, Training, and Oversight Division (PTOD)	Simplified Acquisition (SAP) - (Level I); Basic- (Level II-A); Intermediate- (Level II-B); Senior- (Level III); Contingency for PTOD employees; SACO and Commercial Governmentwide Purchase Card.

Chart 3

Appointing Official	Warrant Type
Director, Headquarters Acquisition Division (HQAD), formerly Headquarters Procurement Operations Division (HPOD)	Simplified Acquisition (SAP) - (Level I); Basic-(Level II-A); Intermediate- (Level II-B); Senior- (Level III); Contingency for HQAD employees

Chart 4

Appointing Official	Warrant Type
Director, Information Technology Acquisition Division (ITAD), formerly RTP Procurement Operations Division (RTPPOD)	Simplified Acquisition (SAP) - (Level I); Basic- (Level II-A); Intermediate- (Level II-B); Senior- (Level III) for RTPPOD; Contingency for ITAD employees;

Chart 6

Appointing Official	Warrant Type
Director, Cincinnati Acquisition Division (CAD), formerly Cincinnati Procurement Operations Division (CPOD)	Simplified Acquisition (SAP) - (Level I); Basic-(Level II-A); Intermediate- (Level II-B);Senior- (Level III); for CAD employees

1.6.4.5.4 Contingency Warrants-On-Scene Coordinators (OSCs)

The EPA On-Scene Coordinator (OSC) is a predesignated Federal official who coordinates and directs responses to environmental and human health threats pursuant to the National Contingency Plan (NCP), for example, response activities at oil spills and hazardous substance releases. The OSC ensures that the response is appropriate and timely, while minimizing environmental damage and protecting public health.

An OSC must be appointed in writing by a cognizant COs to serve as a Contracting Officer's Representative (COR). Also, an OSC must comply with the requirements stated in the appointment memorandum and the certification training and recertification requirements as stated in EPAAG Subsection 1.6.5 - Contracting Officer's Representatives Three-Tiered Program.

Some OSCs may also serve as a warranted CO and be granted limited purchasing authority as a CO for individual contract actions. CO authority for OSCs is reserved for EPA personnel whose responsibilities include obtaining the services necessary to respond to emergencies and time-critical releases or potential releases of hazardous substances, pollutants, contaminants, and petroleum products that present an imminent and substantial threat to the public health, welfare, or the environment. Warrant limitations:

- (a) When an emergency occurs that requires immediate response action, contracting support work may be issued in writing or orally. Prior to exercising this authority, the OSC must determine whether sufficient time permits for issuance of the work through the cognizant GS-1102 CO. For emergency actions, oral orders shall not exceed \$200,000.
- (b) Non-GS-1102 personnel are strictly limited to the following obligation thresholds:
 - (1) Entering into new agreements through the EPA authorized Notice to Proceed, as described in EPAAR 1516.603, to procure goods, supplies, and/or services in support of emergency response actions. This authority can only be used if the OSC has determined that the cognizant GS-1102 CO is unable to provide the required contractual support. The amount of the Government's liability for any contract award via a Notice to Proceed shall not exceed \$200,000.
 - (2) Issuing stop work orders on all or any part of the work ordered in EPA response action contracts during emergency response actions. The stop work periods shall not exceed 14 calendar days.
 - (3) Consenting to subcontracts during an emergency response or other removal action where the OSC documents an urgent need requiring EPA subcontract consent and the cognizant GS-1102 CO is unable to provide the required subcontract consent support within a reasonable time period. No subcontract consent provided by an OSC shall exceed \$200,000 in subcontract value.
 - (4) Authorize the contractor to incur overtime premiums in response actions.
 - (5) Authorize the incurrence of standby costs for equipment items in response actions

for periods not-to-exceed 14 calendar days.

1.6.4.5.5 BPA Call Ordering Officers

BPA Call Ordering Officers (BPACOO) may be established to make purchases up to the micro-purchase threshold against Federal Supply Schedule contracts, and calls written against specific Blanket Purchase Agreements (BPA) that contain a provision authorizing payment by purchase card, in support of their organization's mission. A Call Ordering Officer's appointment is initiated by a CO. Contracting Officer personnel cannot be appointed as a BPACOO.

(a) Standards of Conduct

Because of the sensitivity of the contracting mission and conflicting business and cultural standards, the potential for misunderstanding and appearance of impropriety is greatly heightened. It is imperative that the conduct and behavior of all contracting personnel be above reproach and does not confuse members of the local business community. Therefore:

- (1) No personnel appointed as a Call Ordering Officer may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who:
 - (i) Has or is seeking to obtain Government business;
 - (ii) Conducts activities that are regulated by the Contracting Office; or
 - (iii) Has interests that may be affected by the performance or nonperformance of the person's official duties.

BPACOO should take nothing of any value from vendors and potential vendors. Any exceptions must be in accordance with ethics regulations and must foster positive relations with the local populace without compromising the acquisition process.

- (2) In accordance with the FAR 13.003(c), Ordering Officers shall not break down requirements aggregating more than the call ordering officer's authorized limit merely to permit use of the BPA. This practice is commonly called "splitting purchases/orders" and is strictly forbidden. Split purchase is when a requirement exceeds the appointment letter's single purchase authorization; the request shall be forwarded to the contracting office for procurement. Splitting the requirement into two or more purchases to maintain each purchase amount under the single purchase authorization is not authorized and is considered fraud.

(b) Mandatory Training and Appointment

An employee must be trained and warranted to be appointed by a cognizant CO as a BPACOO with authority to place orders up to the micro-purchase threshold (\$3,500 per call order under a specific BPA. The total amount of all calls placed against the BPA shall not exceed \$100,000 over a three-year period.

- (1) BPA Call Ordering Officers (both existing and new) shall take CON 237- *Simplified Acquisition Procedures* – Online (6 CLPs) training course to be warranted and appointed

for purchase call authority up to \$3,500 but, not to exceed the \$100,000 (per BPA) over a three-year period. This course identifies the benefits of using Simplified Acquisition Procedures (SAP); identifies when SAP can be used and the associated benefits of this contract type; identifies potential market research resources and techniques; determines when required sources and mandatory items must be used; describes how to select a purchase method to be used in conjunction with the SAP; describes how to select a solicitation method to be used in conjunction with the SAP; describes how to determine the types of evaluation factors to use in SAP solicitations; and describes post-award actions that should be taken according to FAR Part 13.

- (2) BPA Call Ordering Officers must have a FAITAS record for recording of training and maintaining warrant accountability.
- (3) Upon completion of training, the BPA Call Ordering Officer must be warranted and then appointed on a Memorandum of Appointment signed by a cognizant warranted CO.
- (4) When authorized to make purchases, the list of BPAs, Federal Strategic Sources Initiative (FSSI), and contracts will be identified on the Ordering Officer's appointment letter or as an attached listing.
- (5) A CO shall approve the pricing on the call from an unpriced BPA and then authorize the BPACOO to place an order.
- (6) Upon appointment, the following items will be added to the Ordering Officer file:
 - Training certificate of completion
 - A copy of warrant authority
 - BPA Call Ordering Officer Memorandum of Appointment signed by the contracting officer with Special Instructions, if applicable.
 - A copy of all authorized purchases, the list of BPAs, FSSI, and federal and Agency strategic sourcing contracts identified on the Ordering Officer's appointment letter or as an attached listing.
 - A copy of all CO approved pricing on the call from an unpriced BPA and documentation of authority to place the order.

(c) Purchasing Process

- (1) All requirements for purchase must be IAW BPACOO Memorandum of Appointment signed by the CO with Special Instructions, if applicable. No matter what request mechanism is used, it must contain a clear and understandable item description, specific quantity, and cost estimate.
- (2) The BPACOO shall ensure he/she is authorized to purchase the requested item IAW the letter of appointment and special instructions and that sufficient funds are available. As a designated representative of a CO, a BPACOO is not authorized to purchase supplies

and/or services above or contrary to the authority of the Contracting Officer issuing the appointment.

- (3) The BPACOO will then use the listed Federal Strategic Sources Initiative (FSSI), BPAs or contracts identified on his or her letter of authority to fulfill the request.
- (4) A determination of price reasonableness shall be made, if applicable.
- (5) The BPACOO shall obtain a purchase receipt from the vendor and maintain it in the contract file as proof of purchase.
- (6) BPACOO shall contact the appointing CO for approval of the pricing when utilizing an unpriced BPA, and then authorize the cardholder to place the order.
- (7) Should the purchase be made under unusual circumstances, special situations, or is a regulated purchase, the Ordering Officer shall document their file with the date, description of circumstance, and any other relevant information which directly impacted the procurement process.
- (8) A Sample Appointment Memorandum for Call Ordering Officers (to be tailored appropriately by the cognizant contracting officer), is located in Appendix 1.6.4-A.

(d) Inspections and Reviews

- (1) BPACOO files shall be physically inspected or reviewed through examination of purchase documents and records during Contract Management Reviews.
- (2) Inspection or review findings shall be written and shall include specific comments as to whether the BPACOO is:
 - Operating within the scope and limitations of his/her authority.
 - Maintaining the standards of conduct as prescribed in Ethics Regulation.
 - Not exceeding funding authorization.
 - Not delegating authority to others.
 - Submitting correct and timely information for procurement reporting purposes.
 - Not making unauthorized or prohibited purchases of items.
 - Maintaining adequate documentation for each purchase.
- (3) Copies of inspection and review findings shall be retained for one year in the files of Ordering Officers and of inspectors or reviewers.
- (4) Should a CO appointing authority find that a BPACOO is not properly performing his/her duties or fails to take prompt action to correct deficiencies noted in inspections or reviews, the CO appointing authority shall terminate, in writing, the appointment of the BPACOO.

- (5) Copies of inspection and review findings shall be retained for one year in the files of BPACOOs and of inspectors or reviewers.

1.6.4.5.6 Procedures for Requesting and Management of Warrants

(a) OAS is tasked with providing acquisition support throughout the Agency. Contracting Officers' warrants will be issued to Agency employees outside of OAS based on organizational need as well as the qualifications of the individual. All warrants issued under the authority and applicability of this policy must include the EPA Nomination Application for Contracting Officers Warrant (COW) template (See Appendix 1.6.4-B).

(b) Procedures for obtaining a Government-wide Commercial Purchase Card are set forth in EPAAG Chapter 13.3.1.

(c) For contingency warrant requirements see section 1.6.4.5.4 of this policy.

(d) Simplified Acquisition Contracting Officer (SACO) warrant request must be submitted to the Division Director of the Policy and Training Operations Division for approval at OMS-ARM-OAS-AcquisitionPolicy@epa.gov with the subject line: SACO WARRANT REQUEST (PROGRAM OFFICE OR REGION). The PTOD Division Director is responsible for reviewing the requestor's warrant package to ensure the requestor has completed required FAC-C level requirements and follows continuous training requirements, if applicable, before approval. Approval validates that the requestor has met the education, training, experience, and continuous training requirements for the warrant level being sought.

(e) All warrant requests must be submitted to the cognizant Contracting Appointing office, except for SACOs. The cognizant contracting office is responsible for reviewing the requestor's warrant package to ensure the requestor has completed required FAC-C level requirements and follows continuous training requirements, if applicable, before approval. Approval validates that the requestor has met the education, training, experience, and continuous training requirements for the warrant level being sought.

(f) Level IV warrant requests for the designated approving officials must be submitted to the ACM for review and processing. The ACM will assist the requestor in mitigating any issues before forwarding the warrant request package to the SPE for approval. SPE approval validates that the requestor has met the FAC-C and continuous training requirements for issuance of a Level IV warrant. The approved warrant certificate will be routed back to the appropriate requestor.

(g) The following information shall be included in all warrant request:

(1) Name and address of the requesting organization.

(2) Name, position title, and grade of nominee.

(3) Delineate the nominee's:

(i) Experience in Government contracting and administration, commercial purchasing, and/or related acquisition fields;

- (ii) Education or special training in business administration, law, accounting, engineering, or related fields;
 - (iii) Knowledge of acquisition policies and procedures;
 - (iv) Specialized knowledge in the particular assigned field of contracting, e.g., IT contracting;
 - (v) Satisfactory completion of acquisition training courses; and
 - (vi) Current FAC-C Level; and
 - (vii) Type of warrant requested, such as Simplified Acquisition (SAP) - (Level I); Basic- (Level II-A); Intermediate- (Level II-B); Senior- (Level III); Special; and Contingency warrant, and any restrictions to these authorities.
- (4) Desired effective date of appointment/warrant.
- (5) Each warrant shall include language on Mandatory Use of Required Common Use Contracts in accordance with EPAAG 8.0.100 as a first source before considering other acquisition strategies.
- (6) Each certificate of appointment shall stipulate a specific termination date or specify, unless terminated sooner, the appointment is effective as long as the appointee is assigned to EPA in a similar or same position. Appointing officials shall be notified of all warrant changes, e.g. if the employee takes a new job in the Agency or leaves the Agency.
- (7) Each nominating official must document the need for contracting authority based on:
- (i) Example of types of supplies and services to be purchased;
 - (ii) The number of employees in your organization who currently have warrants and the level of all warrants (or those proposed to exercise contracting authority); and
 - (iii) The factors that make the current purchasing support insufficient.
- (8) To avoid potential conflicts of interest, there should be an adequate separation of functions; (i.e., one individual should not be responsible for initiating, awarding and accepting supplies or services under a contract action). The requesting organization must include a plan for maintaining this separation of functions with its request for contracting authority. In cases where functions cannot be separated, specify the management controls in place to prevent abuses.
- (9) Address the procedures in place for a periodic acquisition review to ensure applicable Federal and Agency acquisition policies and regulations are followed.
- (10) The designated appointing official shall ensure that the Senior Resource Official receives a copy of the certificate of appointment for all non-OAS employees.
- (11) Effective with issuance of this policy, the designated appointing official shall ensure that the designed warrant coordinator in their perspective area keep track of warrants issued and ensure they are entered into the Warrant Tracking spreadsheet.

1.6.4.5.7 Requesting Waivers to the Agency Warrant Requirements

- (a) The SPE may waive the requirement for obtaining a FAC-C certification for warranting purpose in writing, on a case-by-case basis, if granting a waiver is in the best interest of the agency. Waivers shall only be granted for exceptional and compelling reasons. This waiver authority is not delegable.
- (b) A written justification shall include the reason for and conditions of the waiver with supporting documentation. This waiver is not transferable to another agency.
- (c) Requests must be made through the ACM to the SPE using Appendix 1.6.4-C - Memorandum Format for Applying for Contracting Officer Warrant Waiver. Waivers shall not exceed 24-months for FAC- C required employees under EPAAG, Subsection Section 1.6.3 - Contracting Series Training and Certification Program and approved waivers are not transferrable to another agency.
- (d) Requests must be made through the ACM to the SPE using Appendix 1.6.4-C - Memorandum Format for Applying for Contracting Officer Warrant Waiver, for GS-1102s employees hired with a waiver and those serving under "Grandfathering" -- The Exception Provisions for Series 1102 qualification standards with no FAC-C certification. These waivers will be issued indefinitely, and approved waivers are not transferrable to another agency.
- (e) If a waiver is approved, the SPE will forward a copy of the approval memo to the respective appointing official who will issue the warrant. If it is not approved, the SPE will provide an explanation.

Note: In accordance with the OMB, OFPP Memorandum, "Revision to the Federal Acquisition Certification in Contracting (FAC-C) Program, May 7, 2014," the FAC-C program utilizes education, experience, and training requirements in the certification process. *An individual must meet all the FAC-C requirements (education, experience, and training) to be certified. For more information, see EPAAG 1.6.3, Contracting Series Training and Certification Program.*

1.6.4.5.8 Mandatory Training for Contracting Officers and Contract Specialists Involved in Contract Pre-award and Post-award Activities

Beginning October 2, 2017, mandatory training requirements must be taken once by all operational COs/CSs before the end date of a recertification continuous learning cycle.

Supervisors are charged to ensure this training is taken as part of the total required 80 continuous learning points needed to maintain the FAC-C certification status as "current".

This mandatory training, as prescribed by the OAS Director/SPE to comply with regulatory guidance such as the Duncan-Hunter National Defense Authorization Act; OMB guidance; GAO reports; and Agency findings based on results from Office of Inspector General reviews/audits, and OAS contract management reviews, pertains specifically to 1102 COs and CSs who are directly involved in pre and post-award contracting activities (i.e. contract planning, formation, award, and administration).

Required training is subject to change, guidance on mandatory training for COs/CSs can be found at: <http://oamintra.epa.gov/node/226>, please check frequently for updates.

1.6.4.5.9 Continuing Education for the Warranted Acquisition Workforce

Allowing a FAC-C certification to expire will impact an employee's ability to perform contract award and/or administration duties and responsibilities. Under this policy, the SPE or HCA may suspend an individual's warrant. See EPAAG Subsection 1.6.3- Contracting Series Training and Certification Program for FAC-C certification reinstatement requirements.

- (a) FAC-C CO certified warrant holders are required to complete 80 CLPs every two years in accordance with their FAC-C recertification cycle to maintain their warrants. See EPAAG Subsection 1.6.3- Contracting Series Training and Certification Program.
- (b) GS-1102s employees hired with a waiver and those serving under "Grandfathering" -- The Exception Provisions for Series 1102 qualification standards with no FAC-C certification, must complete 80 CLPs every two years to maintain the warrant. These employees must provide their supervisor with evidence of 80 CLPs for approval and tracking every two years to maintain the warrant.
- (c) Employees with an SPE approved Contracting Officer Warrant waiver must provide their supervisor with evidence of 80 CLPs for approval and tracking every two years to maintain their warrant.
- (d) On-Scene Coordinators (OSCs) certified as a COR with a contingency warrant must complete 40 CLPs every two years in accordance with EPAAG 1.6.5 - EPA Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Three-Tiered Program. Failure to meet the 40 CLPs requirement may result in a suspended warrant.
- (e) *Tracking and Auditing of CLPs.*
 - (1) All Agency Acquisition Workforce members must track their CLPs through FAITAS found at <http://www.fai.gov/drupal/>. Immediate supervisors of Acquisition Workforce Members are responsible for confirming training, education, and experience entered into FAITAS. The ACM, FAI, and OFPP (if requested) are responsible for auditing information entered into FAITAS.
 - (2) Any Agency CO who does not meet the 80 CLPs requirement will have their warrant revoked in FAITAS. If a CO's FAC-C lapses in FAITAS, the warrant will be revoked at the same time.
 - (3) FAITAS will send the warrant holder and supervisor reminder notices on the FAC-C status for recertification CLPs starting at 180 days through 15 days from date of expiration.
 - (4) CLP compliance audits will be conducted at the close of the cyclic two-year continuous learning period by the Agency ACM and/or by OFPP (if requested).

(5) The ACM will notify the HCA or designated representative of all 1102s fac c warrants revoked for not meeting the CLP requirements.

(6) Individuals who do not meet their CLP requirements, within the required two-year cycle, will be notified along with their Division Director and supervisor.

(7) If a CO fails to meet the 80 CLP requirements within the required two-year CLP cycle, the CO must recertify at the same level as the current expired/revoked certification under the new FAC-C (Refresh) curriculum and submit a new a certification request in FAITAS for reinstatement. A new warrant nomination application for a contracting officer warrant request must be completed before a warrant is reissued.

(8) If an OSC fails to meet the 40 CLP requirements within the required two-year cycle, the warrant will be revoked in FAITAS. If the OSC's FAC-COR lapses in FAITAS, the warrant will be revoked. FAITAS will send the warrant holder and supervisor reminder notices on the FAC-COR status for recertification CLPs starting at 180 days through 15 days from date of expiration. If the FAC-COR lapses and the warrant is revoked, the OSC must follow the Revoked FAC-COR procedures in accordance with this guide EPAAG 1.6.5 - EPA Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Three-Tiered Program, to meet the CLP requirements and request a reissued warrant. Also, a new nomination application for a contracting officer warrant request must be completed before a warrant is reissued.

1.6.4.5.10 Oversight of Acquisition Functions

(a) To avoid potential conflicts of interest, there should be an adequate separation of acquisition functions, i.e., one individual should not be responsible for initiating, awarding and accepting supplies or services under a contract action. In cases where functions cannot be separated, additional management oversight must be established to prevent abuses.

(b) Both the Government Accountability Office (GAO) and the Office of Management and Budget (OMB) have established standards for management accountability. GAO issues standards for internal control as required by the Federal Managers' Financial Integrity Act of 1982. GAO's Standards for Internal Control in the Federal Government are posted on the internet at <http://www.gao.gov/special.pubs/ai00021p.pdf> . Prudent business practice also dictates that managers provide some level of internal review over individuals with fiduciary authority and responsibility. Organizations outside of OAS are responsible for periodically reviewing their COs' actions to ensure prevention of fraud, waste, and abuse, and to confirm that applicable Federal and Agency acquisition policy and regulations are followed. This can be accomplished by a spot check of acquisition files, pre-award approvals, or post-award review by an individual who is at least one organizational level higher than the CO.

(c) OAS will conduct resources management and measurement type reviews, as resources permit. This review does not substitute for the management controls listed in paragraph (a) above.

1.6.4.5.11 Changed, Suspension and Termination of Warrant Appointment

- (a) General. A CO warrant authority may be changed, suspended or terminated administratively or for cause, in writing, at any time by the appointing official, the Director of OAS as the HCA or designated HCA representative. The official terminating the warrant shall notify the supervisor, individual and servicing program area, and ACM. These individuals/offices shall also be notified when the CO leaves the organization.

Suspension or termination of COW authority must be accomplished using the template format at Appendix 1.6.4-D. Reinstatement of a CO's COW authority must also be in writing using the procedures in 1.6.4.5.6 of this policy.

- (b) Termination Administrative Actions

The following are reasons for administrative termination of a warrant:

- (1) Reassignment of to a position for which a clear and convincing need for COW appointment no longer exists, e.g., reassignment or termination of the employee, or the procurement workload has decreased;
- (2) Transfer of the CO to another Government agency;
- (3) Retirement, resignation, or other termination of the CO's employment; or
- (4) Reassignment within the Agency: In situations where an individual who has been appointed as a CO in one OAS division, regional office, Laboratory, Headquarters or regional field component is permanently reassigned or promoted to another OAS division, regional office, Laboratory, Headquarters or regional field component, the existing warrant shall be terminated. The gaining organization will be responsible for requesting a new warrant, if needed.

- (c) Termination for Cause

Patterns of negligent use of COW authority need not be a prerequisite for termination of a COW for cause. Rather, the circumstances should be examined on a case-by-case basis. In all cases, action should be taken in a timely manner. The following are actions that would justify terminating COW authority for cause:

- (1) Failure to meet the continuous learning points (CLPs) requirements of the FAC-C certification and other applicable situations for meeting the CLP requirements as cited in the policy to maintain the warrant in good standing; or
- (2) Failure to comply with statutes, Executive Orders, OMB Circulars, the FAR, the EPAAR and other EPA regulations, policies and procedures; or
- (3) Failure to comply with delegated responsibilities, i.e., exceeding COW authority requiring ratifications; or

- (4) Violation of the Employee's Responsibility and Ethical Standards of Conduct and/or Procurement Integrity restrictions; or
- (5) Improper use of the government purchase card, whether for procurement of or payment purposes; or
- (6) Failure to demonstrate sound business acumen and personal integrity that puts the Agency at risk and causes a public investigation; or
- (7) Unsatisfactory performance as a CO.

(d) Discretionary Actions

The Designated Appointing Official or HCA may suspend or decrease COW authority pending completion of required initial FAC-C training for the employee's appropriate grade, completion of corrective actions, or while investigating procurement abuses or other possible termination causes.

(e) Termination of BPA Call Ordering Officer

- (1) The following situations may result in termination of the BPA Call Ordering Officer:
 - i. Change of unit
 - ii. Change of duty
 - iii. Term of appointment expires
 - iv. Failure to properly perform BPA Call Officer's duties
- (2) When a BPA Call Ordering Officer's appointment is terminated, the BPA Call Ordering Officer shall submit to the Appointing Contracting Office or designee the following:
 - i. Copy of appointment letter.
 - ii. Copies of all reports filed previously.
 - iii. All records for any period between the last report and the date of termination, including all copies of Invoice Voucher, all sales slips or other receipts, and any justifications (if any) regarding price or source reasonableness.
 - iv. Purchase Request and Commitment over authorized authority.
- (3) Finally, a letter terminating the appointment of the BPA Call Ordering Officer will be issued by the appointing contracting officer to the BPA call officer, Appendix 1.6.4-E, Sample Letter for Termination of Appointment as Blanket Purchase Call Ordering Officer.

1.6.4.12 Oversight and Federal Acquisition Institute Training Application System (FAITAS)

- (a) Oversight of the FAC programs has been delegated by the SPE to the Acquisition Career

Manager (ACM) - also known as the Agency Certification Manager (ACM). The ACM is also the Agency's FAITAS System Administrator; and, this role is not re-delegable. The ACM is a Federal employee of OAS who is formally appointed by the SPE with the responsibility for strategic acquisition human capital management; and management of the Agency's acquisition workforce training, career development, and certification programs in accordance with the requirements of the OFPP Policy Letter 05-01, *Developing and Managing the Acquisition Workforce* (April 15, 2005); section 4307(a) of the Clinger-Cohen Act (40 U.S.C. §1401(3)); and amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433).

(b) For all civilian agencies, FAITAS is the official system of records for the FAC programs. All contracting professionals were required to be registered in FAITAS by January 1, 2014, per September 3, 2013 OFPP memorandum, *Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce*. Individuals are responsible for uploading and maintaining certification and continuous learning supporting documentation in FAITAS.

APPENDIX 1.6.4-A

SAMPLE APPOINTMENT MEMORANDUM FOR CALL ORDERING OFFICERS UNDER BLANKET PURCHASE AGREEMENTS

(To be tailored appropriately by the
cognizant contracting officer)

MEMORANDUM

SUBJECT: Authority to Place Orders under Blanket Purchase Agreement #

FROM: Cognizant Contracting Officer
Name of Service Center

TO: Newly Appointed Call Ordering Officer
EPA Program Office

I hereby appoint you as a call ordering officer under Blanket Purchase Agreement (BPA) # _____ with (specify vendor). A copy of the BPA is attached to this memorandum. Your individual ordering limit is \$3,500 per call. The total amount of all calls placed against the BPA shall not exceed \$100,000 over a three-year period. Only those individuals listed in the BPA may place orders. You cannot re-delegate your call ordering authority or allow others to place calls on your behalf. Listed below are your responsibilities and the rules that apply to the use of an Agency BPA.

1. Funding of Orders

You are responsible for ensuring that funds are committed by your Funds Certifying Official (FCO) prior to placing an order under the BPA. You may fund your orders by having your FCO reserve a specific amount for the month in the COMPASS System or your FCO may certify funds for each individual order. In either case, you must document your file to show that funds have been committed prior to placing an order. Do not place orders that exceed committed funds.

2. Placing Orders

- a. All the orders you place must follow the ordering procedures set forth in the BPA. You must not change the terms and conditions of the attached BPA. All orders placed by you must conform exactly to the procedures stated in the BPA.
- b. In accordance with the Federal Acquisition Regulation 13.003(c), you must not break down requirements aggregating more than your call ordering limit merely to permit use of the BPA. This practice is commonly called “splitting orders” and is strictly forbidden.

3. Recording Orders

- a. By the 24th of each month, calls and receipts for that month and any adjustments to prior monthly reports shall be recorded on EPA Form 1900-63 (attached).
- b. You are required to use EPA Form 1900-63, Monthly Requisition and/or Receiving Report for Blanket Purchase Order Calls, to document your actions. This form is available on the Agency Intranet at [http://basin.epa.gov/oas/internalAdmForms.nsf/01243A5919A9E9918525721F00609AF3/\\$File/1900-63.pdf](http://basin.epa.gov/oas/internalAdmForms.nsf/01243A5919A9E9918525721F00609AF3/$File/1900-63.pdf) or by ordering them from National Service Center for Environmental Publications (NSCEP) in Cincinnati through e-mail at ncepifo@one.net. In addition, you are responsible for following the procedures listed below.
- c. The EPA Form 1900-63 must be signed (1) by you as the call ordering officer who placed the calls, and (2) by a receiving official cognizant of the receipt of the materials. One person shall not sign in both capacities. Funds will be cited with appropriate accounting and appropriation data, and the obligations reported on the 1900-63 must equal the total value of all orders placed and listed on that form.
- d. On the 24th of each month you shall forward a copy of the 1900-63, documenting your orders to the servicing finance office (*specify office and address*).
- e. The servicing finance office will use the completed EPA Form 1900-63 to record obligations each month and to audit vouchers for prices and for items ordered and received.

4. Pricing of Calls

The existence of a BPA does not justify purchasing from only one source. Since your purchasing limit is below the micro-purchase threshold (\$3,000), you are not responsible for documenting price reasonableness. However, it is the responsibility of the ordering officer to ensure that prices are reasonable prior to placing the order. Consequently, it is recommended that you occasionally check the BPA prices against other sources to determine if the Agency is getting the best price.

5. Timing and Distribution

- a. To allow orderly closing of finance records, calls and receipts must be posted through the 24th day of the month. In September of each year, all reasonable efforts shall be made to place orders in time for deliveries to be completed by September 24. If orders are placed between September 25 and September 30, a special EPA Form 1900-63 will be prepared for that period to ensure that all obligations for the entire fiscal year are recorded.

APPENDIX 1.6.4-B
Environmental Protection Agency
Nomination Application for Contracting Officer Warrant (COW)

I. Nominee Information
Name (Last, First, MI):
Organization/AAship:
Duty Location:
Mail Stop Address:
Position/Title:
Series/Grade:
FAC-C Certification Level:
Are you an employee in grades 5 through 12 that was hired in a GS-1102 positions at before January 1, 2000: Yes No
Were you hired as a GS-1102 with a FAC-C training waiver approved by the Senior Procurement Executive (SPE): Yes No
If you were hired as a GS-1102 with a FAC-C training waiver approved by the SPE, did it contain special hiring requirements for completion of the FAC-C certification for your appropriate grade: Yes No
If you were hired as a GS-1102 with a FAC-C training waiver approved by the SPE, was it without special hiring requirements for completion of the FAC-C certification for your appropriate: Yes No
FAC-COR Certification Level (OSC), Indicate NA, if not applicable:
BPA Call Ordering Officer, Indicate NA, if not applicable: CON 237- Simplified Acquisition Procedures completed: Yes No NA
Supervisor Name and Phone Number:
Designated Appointing Official and Phone Number:
Description of Assigned Duties:
Years of Acquisition or Acquisition Related Experience:
Did the nominee apply for a warrant waiver? Yes No
II. Transaction Type (please indicate the type of COW transaction requested)
A. Initial Application:
1. Indicate COW type sought:
2. Indicate COW authority level sought:
B. Current COW Authority:
3. Increase in COW authority from Level to Level .
4. Decrease in COW authority from Level to Level .
Indicate COW authority level sought:
Experience in Government contracting and administration, commercial purchasing, and/or related acquisition fields: Yes No
Education or special training in business administration, law, accounting, engineering, or related fields: Yes No
Knowledge of acquisition policies and procedures: Yes No

Specialized knowledge in the particular assigned field of contracting, e.g., IT contracting, service contracting, etc.: Special Field of Contracting _____.

III Certification

I certify that all supporting documentation is true, complete, and correct to the best of my knowledge and belief and is submitted in good faith.

Nominee Print Name:

Nominee Signature:

Date:

Note: Attach copy of FAC-C certificate, FAC-COR certificate, or training course completion that corresponds to the COW type sought. Attach a written memorandum supporting the need for COW authority delegation or increase/decrease in COW authority level. The memorandum should delineate the nominee's:

- i. Experience in Government contracting and administration, commercial purchasing, and/or related acquisition fields;
- ii. Education or special training in business administration, law, accounting, engineering, or related fields;
- iii. Knowledge of acquisition policies and procedures;
- iv. Specialized knowledge in the particular assigned field of contracting, e.g., IT contracting;
- v. Satisfactory completion of acquisition training courses; and
- vi. Current FAC-C Level.

Recommendation/Concurrences:

The nominee's performance of acquisition duties has been satisfactory. The initial appointment or increase/decrease of COW authority has been documented with justification included in supporting documentation for COW appointment.

Recommended: _____

Not Recommended: _____

Supervisor Printed Name:

Supervisor Signature:

Date:

Acquisition Career Manager, when applicable:

Concur: _____

Do Not Concur: _____

Reason for Non-concurring:

Printed Name:

Signature:

Date:

Final Disposition by Approving Official:

COW Approved: _____ / Date: _____

COW Disapproved: _____ / Date: _____

Type of COW:

<p>Level of COW _____</p> <p>Included language on use of Federal and Agency Strategic Sources Initiatives: Yes _____ No _____</p> <p>Open Market Dollar Authority: _____</p> <p>Established Sources Dollar Authority (if applicable): _____</p> <p>Interagency Agreement Dollar Authority (if applicable) _____</p> <p>Approving Official Print Name: _____</p> <p>Approving Official Signature: _____</p> <p>Remarks: _____</p>

APPENDIX 1.6.4-C

Memorandum Format for Applying for Contracting Officer Warrant Waiver

Applicability: This is the mandatory memorandum format to request a waiver from the contracting officer warrant requirements.

MEMORANDUM

ACTION: Request for Contracting Officer Warrant Waiver

FROM: *(Supervisor)*

THRU: *(Endorsing Official [OAS DD or RAM])*
(Acquisition Career Manager)

TO: *(Senior Procurement Executive)*

1. Request waiver of contracting officer warrant requirements for
Name:
Position Title:
Series/Grade:
Position Description:
2. Is the employee FAC-C certified: Yes _____ No _____
3. If no, why not?
4. What is the condition prompting the waiver request? The rationale should be mission related and unusual and/or compelling.
5. Identify the specific warrant requirements (e.g., courses) that the individual has not met.
6. Provide reasons as to why the requirements were not met; include a statement regarding the individual's ability to perform successfully in the position without meeting the standards.
7. Provide a time-phased plan to meet the warrant requirements. Indicate the date that the individual is expected to meet the warrant requirements to include a contingency plan.
8. Include the supervisor's contact information.

Requesting Official (Supervisor):

(Name)
(Title)

Date

Endorsing Official (DD or RAM):

(Name)
(Title)

Date

Acquisition Career Manager Action:

- ☐ Recommended Approval
- ☐ Recommended Disapproval

(Name)
Acquisition Career Manager

Date

Senior Procurement Executive Action:

- ☐ Approved
 - ☐ Disapproved
- Explanation:

(Name)
Senior Procurement Executive

Date

APPENDIX 1.6.4-D

US Environmental Protection Agency Suspension/Termination of Warrant Appointment

1. Employee Information

Name (Last, First, MI):

FAC-C Certification Level:

Organization:

Position/Title:

Series/Grade:

2. Transaction Type

_____ Suspension of Appointment

_____ Termination of Appointment

3. Rationale (please add the applicable reasons for suspension or termination below and provide a detail narrative, attach supporting documentation, if necessary), See section 1.6.4.5.11 Changed, Suspension and Termination of Warrant Appointment for reasons, e.g.

_____ The clear and convincing need for appointment no longer exists, e.g., reassignment or termination of the employee, or the procurement workload has decreased.

_____ Failure to meet the continuous learning points (CLPs) requirements of the FAC-C certification and other situations as cited in the policy to maintain the warrant in good standing.

_____ Pending completion of required initial FAC-C training for the employee's appropriate grade,

Appointing Official Signature: _____ **Date:** _____

Head of Contracting Activity: _____ **Date:** _____

Senior Procurement Executive: _____ **Date:** _____

APPENDIX 1.6.4-E

SAMPLE LETTER FOR TERMINATION OF APPOINTMENT AS BLANKET PURCHASE CALL ORDERING OFFICER

(To be tailored appropriately by the
cognizant contracting officer)

MEMORANDUM

SUBJECT: Termination of Appointment as Blanket Purchase Call Ordering Officer for **BPA No. FA8601-04-A-Z003**

FROM: Cognizant Contracting Officer
Name of Service Center

TO: Appointed BPA Call Ordering Officer
EPA Program Office

1. **Termination:** In accordance with EPAAG 1.6.4, Contracting Officer Warrant Program, your appointment as a BPA Call Ordering Officer (BPACOO) is terminated effective as of the date of this letter.
2. **Limitation of Authority:** You are not authorized to purchase supplies or services against **BPA No. FA8601-04-A-Z003** for items approved by the Contracting Officer on the issued Appointment letter dated, May 15, 2004.
5. **Administration:** A copy of this termination letter will be maintained a record in **BPA No. FA8601-04-A-Z003** file.

Jane Smith
Jane Smith
Contracting Officer

**APPENDIX 1.6.4-E
SAMPLE OF WARRANT**

Subsection 1.6.4

Certificate of Appointment

Under authority vested in the undersigned and in conformance with
Subpart 1.6 of the Federal Acquisition Regulation

(Name)
is appointed
Contracting Officer
for the

United States of America

Level of warrant – List any warrant limitations, below and on back if more space is needed:

Limitation example: Authority to appoint micro-purchase contracting officers under the Agency purchase card program and authority to appoint call ordering officers with authority to place orders for office paper and toner up to the simplified acquisition threshold for FSSI office supply contracts. Issue Purchase Cards for Agency employees with warrants and appoint Purchase Card Contracting Officers. The dollar value of this authority is unlimited.

Office of Acquisition Solutions

(Organization)

U.S. Environmental Protection Agency

(Agency)

**Unless sooner terminated, this appointment is
effective as long as the appointee is assigned to:**

Insert Branch and Division Name

(Signature and Title of Appointing Official)
(Division Name)

Date

Warrant No.

Subsection 1.6.5 - Contracting Officer's Representatives Three-Tiered Program (July 2019)

1.6.5.1 Purpose.

This policy establishes the processes and procedures governing Environmental Protection Agency (EPA) Contracting Officer's Representatives (COR) three-tiered program. This program establishes a three-tiered, risk-based certification and appointment of COR program. The term Contracting Officer's Technical Representatives (COTRs) is changed to "COR" to align with the FAR, which now incorporates a definition for "Contracting Officer's Representative" and includes designation of a COR as part of a CO's responsibilities (See FAR 1.602-2 "Responsibilities" and 2.101, "Definitions").

1.6.5.2 Background.

As the President and Congress are focusing on performance outcomes, agencies must ensure their acquisition workforce (AWF) is capable of effectively overseeing and managing contracts, and ensuring contractors perform in accordance with contractual requirements and take corrective action when performance is not acceptable. The Office of Management and Budget (OMB) and Government Accountability Office (GAO) issued policy memorandums and reports to assist agencies in focusing on these issues, such as OMB's memoranda on "The Federal Acquisition Certification for Contracting Officer Technical Representatives" (Nov 26, 2007) and "Improving Government Acquisition" (Jul 29, 2009), and GAO's report titled "Extent of Federal Spending under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used" (Sep, 2009). Additionally, the Duncan-Hunter National Defense Authorization Act for FY2009 - Use of Cost Reimbursable Contracts (enacted Oct 14, 2008) aligns with the President's goal of reducing high risk contracting and calls for designating properly trained Contracting Officer's Representatives, if contemplating use of cost reimbursement contracts.

To be sure that CORs are trained and developed appropriately to meet this increasing requirement, the Office of Federal Procurement Policy (OFPP) issued a memorandum on September 6, 2011, entitled "Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)" which replaced OFPP memorandum entitled "Federal Acquisition Certification for Contracting Officer Technical Representatives (FAC-COTR)" issued on November 26, 2007. As stated in the OFPP memorandum "strengthening the acquisition workforce is critical to ensuring that the government gets the best value for the more than \$500 billion of goods and services it procures annually." EPA shares this belief.

CORs ensure that contractors meet the terms and conditions of their contracts, are often the first to recognize when a program or contract is under performing, and are increasingly being asked to manage complex, high-value contracts that involve varying degrees of risk. Where previously there was just one level of certification for all CORs, the new three-tiered program established three levels (Level I, Level II, and Level III) of certification with varying requirements for training, experience, and continuous learning, depending on the types of contracts and risk being

managed. In addition, the program was designed to strengthen the AWF by improving program outcomes consistent with the President's March 2009 Memorandum on Government Contracting, which reflects the need to improve the management of high-risk contracts.

The new three-tiered program requirements were effective January 1, 2012, and Agencies were directed to develop guidance to ensure their CORs were appropriately trained and certified. The guidance also stated that current CORs shall be grandfathered in as Level II CORs in lieu of Agency undeveloped policy. On January 1, 2012, the EPA grandfathered all current FAC-COR certified holders as Level II and required new requests for FAC-COR certification to be at Level II during the transition to the EPA three-tiered FAC-COR program policy which was effective October 1, 2013 under Interim Policy Notice (IPN) 13-03.

As set forth in the OFPP Memorandum dated September 6, 2011, the Agency may prescribe additional training requirements above the requirements set forth in the OFPP Memorandum, as necessary, to support mission requirements, federal statutes, OMB requirements, GAO requirements, Office of the Inspector General (OIG) findings, and Office of Acquisition Solutions (OAS) contact audit and review findings. The Agency FAC-COR certification consists of competency-based core training, other Agency-specific prescribed training, and experience (if applicable) for issuance of an initial certification and recertification.

1.6.5.3 Authority/Applicability.

(a) *Authority.* This policy is issued pursuant to the Office of Federal Procurement Policy Act, 41 U.S.C § 1101 et. seq., OFPP Policy Letter 05-01, "*Developing and Managing the Acquisition Workforce*," April 15, 2005, which established a requirement for federal acquisition certification programs, and OFPP Memorandum, "Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)," dated September 6, 2011, which establishes a three- tiered program. The following authorities apply to the EPA's three-tiered COR program:

- (1) Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C § 1101 et. seq
- (2) Services Acquisition Reform Act of 2003, Public Law 108-136
- (3) OFPP Policy Letter 05-01, "Developing and Managing the Acquisition Workforce," paragraph 8(c) (April 15, 2005)
- (4) OFPP Memorandum, "Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)," dated September 6, 2011
- (5) OFPP Memorandum, "Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce," dated September 3, 2013

(b) *Governance.*

(1) The Senior Procurement Executive (SPE) is responsible for management direction on acquisitions, procurement systems, and the acquisition workforce – including the implementation of acquisition policies, regulations, and standards. Additionally, the SPE is responsible for identifying the members of the Agency’s acquisition workforce, defining training needs, and developing and maintaining an acquisition career management program to ensure the development of a competent, professional workforce to support the accomplishment of the Agency’s mission.

(2) The Acquisition Career Manager (ACM), also known as the Agency Certification Manager, is a Federal employee in the OAS. The ACM is officially appointed in writing by the EPA SPE with the responsibility for strategic acquisition human capital management; and management of the Agency’s acquisition workforce training, career development, and certification programs in accordance with the requirements of the OFPP Policy Letter 05-01. As the Agency Certification Manager, the ACM approves/disapproves all COR certification requests. Under unforeseen emergency circumstances (e.g., natural disasters, environmental emergencies), the ACM makes recommendations to the SPE for approval/disapproval for deferment of COR training.

(c) *Applicability.* This policy is applicable to FAC-COR certifications and appointment of employees as a COR. An employee and his/her supervisor may request FAC-COR certification and/or maintenance of FAC-COR certification even if the employee is not currently appointed, by a CO, as a COR for a particular contract(s) at the time of certification.

1.6.5.4 Definitions.

(a) *Definitions.*

Acquisition Related Technical Training/Activities - is defined as professional development training/activities required to support a COR’s technical knowledge in their career field to enhance technical performance of their COR duties and responsibilities. Professional development includes formal training courses; participating in professional organizations events (conferences, training, seminars, and workshops); serving in professional association leadership roles; publishing articles related to acquisition in the technical specialty; participating in experiential activities, for example: participation in Technical Evaluation Panels (TEP) - Maximum 20 points per year. The number of continuous learning points (CLPs) for these types of training/activities may be granted not to exceed the number of CLPs as stated in this policy’s guidance. CORs and supervisors should also seek the advice of the ACM in the assignment of CLP values for activities not listed.

Acquisition Specific Training - is defined as structured educational and training experiences, activities and events that serves to enhance the COR competencies skills for performance outcomes to improve the effectiveness of the Agency contracting pre-award and post- award phases. These phases include acquisition planning, market research, defining requirements, pre-award contract communications, proposal evaluations, contract negotiation, inspection and

delivery, contact quality assurance and evaluation, contract administration, contract close-out, contract reporting, and project management. This includes all mandatory training for access to and recertification on the EPA's Acquisition System (EAS).

Acquisition Workforce (AWF) - the Agency AWF includes:

- a. All positions in the general schedule contracting series (GS-1102);
- b. Positions in the Accounting series (GS-510) and Auditing series (GS-511) that involves acquisition functions such as cost and pricing review/negotiation, investigating the financial responsibility of offerers, auditing contractor invoices, and reviewing contractor accounting and cost estimating systems and records;
- c. All COs regardless of general schedule series with authority to obligate funds above the micro-purchase threshold;
- d. All positions in the general schedule purchasing series (GS-1105);
- e. All CORs;
- f. Program and project managers (P/PMs) as identified by the Agency's Chief Acquisition Officer or SPE. (for example managers of major and minor IT investment programs); and
- g. All other managers as designated by SPE.

Bureau Certification Manager (BCM) - is a member of the OAS staff who reviews FAC-COR certification requests and recommends approval/disapproval to the ACM in FAITAS.

Bureau Continuous Learning Manager (BLCM) - is a member of the OAS staff who reviews CLPs and approves/disapproves the CL Achievement Request for recertification in FAITAS Continuous Learning Module (CLM).

Chief Acquisition Officer (CAO) - The Administrator of EPA delegates contracting authority to the EPA's Chief Acquisition Officer (AA for Office of Mission Support (OMS), formerly OARM), who delegates this authority to the EPA SPE (Director of OAS). Additionally, the CAO is responsible for identifying the members of the Agency's acquisition workforce and developing and maintaining an acquisition career management program to ensure the development of a competent, professional workforce to support the accomplishment of the Agency's mission. The CAO has delegated these authorities to the SPE.

Chief Acquisition Officers Council (CAOC) - is the Council is established pursuant to Section 16 of the Office of Federal Procurement Policy Act, as amended, 41 USC 403, et seq. The Council consists of a diverse group of acquisition professionals in the Executive Branch established to provide a senior level forum for monitoring and improving the federal acquisition system. The Council promotes effective business practices that ensure the timely delivery of best value products and services to the agencies, achieve public policy objectives, and further integrity, fairness, competition, and openness in the federal acquisition system. The Council works closely with the Administrator, Office of Federal Procurement Policy, and the Federal Acquisition Regulatory Council to promote these business practices in the acquisition system.

Continuous Learning Points (CLPs) - are points awarded for successful completion of continuous learning training/activities/events. One CLP generally equates to one classroom hour and varies for other learning activities.

Contracting Officer (CO) - a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The CO is a warranted Federal employee expressly designated in writing to perform as a CO within authorized warrant authorities. Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. The SPE has delegated acquisition authority to exercise management and oversight responsibilities for the acquisition system to the Agency's contracting officers.

Contracting Officer's Representative (COR) - CORs are technical representatives of the CO. A COR is a Federal employee nominated by a supervisor and appointed in writing by the CO to assist in the technical monitoring or administration of a contract. These functions may include ensuring that contractor deliveries or performance meets the standards set forth in the contract, ensuring the contractor meets the technical requirements under contract terms by the delivery date(s) and/or within the period of performance, and ensuring that the contractor performs within the price or estimated cost stated in the contract. The COR is not authorized to perform any function that results in a change in the scope, price, terms or conditions of the contract. The Agency has three levels of CORs that are described in 1.6.5.10(a) of this policy.

Contractor Performance Assessment Reporting System (CPARS) - is a web-enabled application that collects contractor Past Performance Information (PPI) as required by FAR Part 42 and EPA Acquisition Regulation (EPAAR) 1542 for award actions valued over the simplified acquisition threshold. The CPARS module captures the Agency's assessment for past performance on contracts for systems, services, IT, and operations support (the CO and COR assess, the system just retains the report). CPARS also contains separate modules for assessing architect-engineer (A&E) services and construction.

EPA Acquisition Guide (EPAAG) - is EPA's guide of supplemental policy and procedures for acquisition.

EPA's Acquisition System (EAS) - is EPA's official electronic contract writing system. EAS provides an efficient acquisition system that interfaces with the Integrated Acquisition Environment (IAE), to reduce operating costs and increase the quality of service provided by the EPA acquisition community. EAS is an integral part of moving the Agency to a paperless acquisition process.

EPA Acquisition Regulation (EPAAR) - is the Agency acquisition regulation that supplements the Federal Acquisition Regulation which has the full effect of the law.

Federal Acquisition Certification (FAC) - are common certification programs that generally reflect a government-wide standard for education, training, and experience leading to the fulfillment of core competencies to promote the development of core acquisition competencies government-wide and to facilitate employee mobility.

FAC in Contracting (FAC-C) Program - is a certification program that focuses on training, experience, and continuous learning activity requirements for professionals that procure and manage goods and services for the agency in the procurement process.

FAC for Contracting Officer's Representatives (FAC-COR) - is a program that focuses on training, experience, and continuous learning requirements for FAC-COR certification with final approval by the Acquisition Career Manager. The FAC-COR certification is part of the requirements for an employee to be eligible for nomination by a supervisor and appointment in writing by a CO to perform the duties and responsibilities as a COR on an active contract(s). Note: An employee and his/her supervisor may request FAC-COR certification and/or maintenance of FAC-COR certification even if the employee is not currently appointed, by a CO, as a COR for a particular contract (s) at the time of certification.

FAC for Program/Project Managers (FAC P/PM) Program – is a certification program that focuses on training, experience, and continuous learning activity requirements for professionals that manage the acquisition life cycle of major and non-major capital investment programs and projects.

Federal Acquisition Institute (FAI) - established in 1976 under the Office of Federal Procurement Policy Act, FAI is charged with fostering and promoting the development of a federal acquisition workforce. FAI facilitates and promotes career development and strategic human capital management for the acquisition workforce.

Federal Acquisition Institute Training Application System (FAITAS) - pursuant to 41 U.S.C. §1704(e), FAITAS is the system for all federal civilian Agency employees to electronically submit training applications, certification requests, continuous learning request/achievement, and manage their career development. Per OFPP Policy Letter 05-01, in FY 2011 FAITAS replaced the Acquisition Career Management Information System (ACMIS) as the system for all civilian agencies to maintain and manage consistent Agencywide data on the Agency's acquisition workforce. FAITAS is the official system of record used by EPA to manage all FAC program certifications, training, continuous learning requests/achievements, and individual development plans.

Federal Acquisition Regulation (FAR) – is the primary document that governs the process by which Federal agencies acquire goods and services. Specifically, the FAR:

- a. Establishes uniform policies and procedures for acquisition of supplies and services.
- b. Has the force and effect of the law which allows agencies to implement strategies governing contracting.
- c. In addition, agencies have the ability to supplement the FAR to establish regulatory requirements to address the agency's unique requirements. EPA's supplemental guide is the EPA Acquisition Regulations (EPAAR) which has the full effect of the law.

Functional Advisory Board (FAB) – is an OFPP multi-agency advisory board established to improve the FAC-COR program and make recommendations to more effectively manage the COR workforce.

Government Accountability Office (GAO) - is an independent, nonpartisan agency that works for Congress. It is part of the legislative branch of the United States government. Often called the "congressional watchdog," GAO investigates how the federal government spends taxpayer dollars. GAO advises Congress and the heads of executive agencies about ways to make government more efficient, effective, ethical, equitable and responsive. Its work leads to laws and acts that improve government operations, saving the government and taxpayers billions of dollars.

Head of Contracting Activity (HCA) - is the official who has overall responsibility for managing the contracting activity. The HCA also has the overall responsibility for managing the CO Warrant Program. The OAS Director is the HCA for EPA.

Inherently Governmental Function - is a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, i.e., the discretionary exercise of Government authority, and monetary transactions and entitlements. For more information, see the full definition of inherently governmental function at FAR 2.101.

Office of Acquisition Solutions (OAS) - is the EPA organization with the primary purpose to provide functional direction and control of all processes and operations governing the EPA's acquisition programs. OAS is responsible for all contracting and related activities to fulfill the Agency's mission to protect and safeguard the environment through its business relationships.

Office of Management and Budget (OMB) - is the office that serves as the implementation and enforcement arm of Presidential policy government-wide. Its core mission is to serve the President of the United States in implementing his vision across the Executive Branch. OMB is the largest component of the Executive Office of the President. It reports directly to the President and helps a wide range of executive departments and agencies across the Federal Government to implement the commitments and priorities of the President.

Office of Federal Procurement Policy (OFPP) - is part of OMB and plays a central role in shaping the policies and practices federal agencies use to acquire the goods and services they need to carry out their responsibilities. It was established by Congress in 1974 to provide overall direction for government-wide procurement policies, regulations and procedures and to promote economy, efficiency, and effectiveness in acquisition processes.

On-Scene Coordinator (OSC) - is a predesignated Federal official who oversees response activities at oil spills and hazardous substance releases. The OSC ensures that the response is appropriate and timely, while minimizing environmental damage and protecting public health. When appointed as a COR, an OSC must comply with all required certification training and recertification requirements as stated in this policy. Some OSCs may also serve as a warranted CO and be granted limited purchasing authority as a CO for individual contract actions.

Project Management - is the management of specific investment related work that has defined goals, objectives, requirements, lifecycle costs, and a beginning and an end that delivers a specific product, service or result. A project is unique in that it is not a routine operation, but a specific set of operations designed to accomplish a singular goal.

Program Management - is a group of related work efforts, including projects, managed in a coordinated way. Programs typically include elements of ongoing work.

Ratification - is the act of approving an unauthorized commitment by an official who has the authority to do so.

Remedial Project Manager (RPM) - is the EPA Official responsible for overseeing cleanup actions at a site. When appointed as a COR, a RPM must comply with all required certification training and recertification requirements as stated in this policy. RPMs may perform duties as a Task Order COR for a specific contract vehicle as delegated by the CO appointment letter.

Senior Procurement Executive (SPE) – is responsible for management direction on acquisitions, procurement systems, and the acquisition workforce – including the implementation of acquisition policies, regulations, and standards. Additionally, the SPE is responsible for identifying the members of the Agency’s acquisition workforce, defining training needs, and developing and maintaining an acquisition career management program to ensure the development of a competent, professional workforce to support the accomplishment of the Agency’s mission.

Unauthorized Commitment - is an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

1.6.5.5 Policy.

(a) The CO shall appoint a certified COR on contracts, purchase orders, and delivery/task orders greater than the simplified acquisition threshold, as determined necessary by the CO. The CO shall appoint a certified COR for actions at or below the simplified acquisition threshold that are considered to be “high-risk” (i.e., when the contract type of the action is other than firm-fixed-price, or when the CO determines the complexity of the contract action requires a certified COR be appointed). COR appointments are required for all architect-engineer (A&E) service contracts, construction contracts, and contracts performed outside the United States. Appointment of a COR is generally not necessary when oversight duties are limited to verifying the quantity and quality of delivered items. The certification level of the COR will be commensurate with the contract size, duration, value, contract type, risk, and complexity as described below in Section 1.6.5.10 General FAC-COR Certification Framework.

(b) The CO shall determine the COR level needed based on the risk and complexity of the contract. The requiring program office shall collaborate with the appointing CO during the acquisition planning process prior to submission of the requirements and COR nomination to

discuss the FAC-COR Level certification needed to support the requirement. In accordance with FAR Subpart 7.1, Acquisition Plans, the planner shall ensure that a COR is nominated as early as practicable in the acquisition process by the requirements official. The CO shall appoint the COR as early as practicable after the nomination.

(c) As required by the Office of the Chief Financial Officer (OCFO), program office supervisors shall nominate and the CO shall appoint, an alternate COR for contracts, complex simplified acquisition procedures orders, and TOs/DOs placed under GSA MAS Contracts, GWACs, and MACs, in order to ensure that the Agency meets the 30-day turnaround period on invoice approval per the FAR Subpart 32.9, Prompt Payment.

(d) The CO shall specify the COR's responsibilities in a COR appointment memorandum. The duties and responsibilities of the COR may include pre-award as well as post-award duties. The COR's actions or inactions can be subject to disputes or claims and, in some cases, can result in the COR being personally liable for his or her actions. Therefore, the COR must carefully observe the scope and limitations of the delegated authorities in the appointment memorandum and shall contact the CO about any uncertainties that arise.

(e) The CO may appoint, via a COR Appointment Memorandum, multiple CORs per contract vehicle, including task orders (TOs) and delivery orders (DOs). Multiple CORs shall only be appointed to national multiple site contracts or large single site contracts with multiple operable units. Based on the complexity of the contract vehicle the CO in consultation with the Program Office may determine the need to appoint multiple CORs to a single contract vehicle to ensure effective management of the contract vehicle. The CO will make the final determination on appointing multiple CORs to a contract vehicle, TOs/DOs. The COR Appointment Memorandum shall be specific to each contract vehicle. The CO will coordinate with the contract-level COR, if applicable, to develop the TOCOR appointment memorandum to facilitate seamless communication and coordination between the contract-level COR and the TO/DO COR. The COR Appointment Memorandum shall outline roles and responsibilities between the TO/DO COR and the contract-level COR.

Note: Multiple CORs will be the exception. However, the intent is to allow maximum flexibility to effectively and efficiently manage complex contracts. Allowing multiple CORs will reduce the risk and administrative burden on both the contract-level CO, the TOCO and contract level COR/TOCOR. However, proactive and often communications will be needed to ensure overall effective management of the contracts.

1.6.5.6 Roles and Responsibilities

(a) Contracting Officer (CO).

FAR 1.602-1 specifies that the CO has the ultimate authority and responsibility to enter into, administer, and/or terminate contracts, and to make related determinations and findings on behalf of the Agency. No contract shall be entered into unless the CO ensures that all requirements of

law, executive orders, regulations, and all other applicable procedures, including clearances and approvals have been met and that sufficient funds are available for obligation.

FAR 1.602-1 also specifies that the CO is responsible for “ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interest of the United States in its contractual relationships.” Furthermore, the FAR states “the CO must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.” In undertaking this effort, many COs rely on the assistance and input of numerous financial, legal, and technical experts.

The definition of the CO contained in FAR 2.101 includes certain authorized representatives of the CO acting within their delegated authority. Due to the size and complexity of Agency acquisitions, COs frequently appoint qualified individuals to perform certain contract administration/oversight activities. The Government-wide term for these individuals is a “Contracting Officer’s Representative,” abbreviated as “COR.”

(b) Contracting Officer’s Representative (COR) in General.

Over the years, EPA has developed a wide range of Agency-unique titles for employees who perform COR duties, such as project officer, delivery order project officer, task order project officer, and so forth. Regardless of the title or their varying roles, all of these individuals are designated as “COR.” The basic differences, which will be discussed later in this section, center on the acquisition instrument the COR manages, whether it is a basic contract, a delivery order or task order.

A COR is the authorized representative of a CO. A COR may be either an EPA employee or the employee of another Federal Agency, nominated by a supervisor in the program office and appointed by the CO in writing to perform on an active contract. The COR must possess the necessary experience, knowledge, skills, and abilities to perform the COR duties and responsibilities for the type contract appointed.

COR duties are inherently governmental functions. For this reason, CORs must be qualified Federal Government employees. Senior Environmental Enrollees (SEE) cannot function as CORs because they are grantees and not federal employees.

(1) EPA employees shall not be appointed as CORs until they have completed the required certification training for the level required to support the contract.

(2) CORs shall be nominated prior to appointment.

(3) CORs shall be certified prior to appointment and must maintain certification in accordance with this policy.

(4) CORs assigned to various acquisition contracts and/or foreign grants shall be certified at the highest level required by any one contract within their portfolio.

(5) CO appointment of a COR does not grant the COR authority to enter into contractual agreements or amendments.

(6) CORs shall take EPA's Acquisition System (EAS) training and have an EAS account immediately after being identified for COR nomination. EAS training is offered as computer based training (CBT) and located at <http://easinfo.epa.gov/?q=node/42>). CORs should take the following CBT modules:

- (i) 1-Getting Started;
- (ii) 2-Advanced Procurement;
- (iii) 3-Creating a Requisition.

For more information on EAS training and resource tools (e.g. Participants Guides and Job Aids, EAS Transition Workbooks) visit <http://easinfo.epa.gov/?q=node/32>).

(7) CORs shall be responsible for the input of actions into EAS originated in the program office upon appointment as a COR. These actions include but are not limited to:

- (i) Requisitions and all supporting documents;
- (ii) Acquisition Planning Documents (APP).

(8) CORs may perform only those functions delegated to them in writing by the CO, and shall not take any action reserved for the CO, such as:

- (i) Promise or authorize the contractor to perform work that is in addition to or outside the scope of the contract delivery or task order;
- (ii) Conduct negotiations or bind the Government by making any written or oral agreements with contractors;
- (iii) Directly or indirectly change the following:
 - (A) Pricing, cost or fee;
 - (B) Scope of the acquisition (contract, purchase order, delivery or task order, etc.);
 - (C) Delivery schedule or period of performance;
 - (D) Labor mix or level of effort; or
 - (E) Any terms or conditions of the contract;
- (iv) Re-delegate or reassign their COR authority;
- (v) Authorize Government-furnished property or its disposition; or
- (vi) Direct the contractor to start work or issue stop work orders.

(9) CORs shall closely monitor contract performance and provide the CO with written documentation that identifies the contractor's compliance or noncompliance with the terms and conditions of the contract. Written documentation in the form of a simple signed memorandum or email with supporting data will suffice for the CO to take action. That memorandum or email will become part of the official contract and COR file documentation.

(10) The COR shall maintain a file for each assigned contract. The file must include, at minimum:

- (i) A copy of FAC-COR certification certificate and approved CL Achievement certificates;
- (ii) A copy of the EPA COR nomination form;

(iii) A copy of the COs appointment memorandum of designation describing the CORs duties and responsibilities;

(iv) A copy of the OSC warrant, if applicable;

(v) Documentation of COR actions taken in accordance with the CO delegation of authority; and

(vi) Documentation of contractor performance issues for compliance or noncompliance with the terms and conditions of the contract.

(11) The COR may be personally liable for unauthorized acts or commitments. As defined above, an unauthorized commitment means an agreement that is not binding solely because the Government representative lacked the authority to enter into that agreement on behalf of the Government. Specifically, the COR has no authority to make any commitments that change the scope, price, quality, quantity, delivery, or other terms and conditions of the contract.

(12) CORs cannot re-delegate or assign their acquisition duties to another person. Only a CO can appoint CORs. Also, CORs cannot sign for other CORs since COR authority is contract-specific. The COR's supervisor (unless he/she is appointed by the CO as a primary COR or alternate COR to the specific contract) does not have the authority to fill-in for the COR, to perform COR duties, or to oversee and/or direct the contractor. Only the primary and alternate COR who are appointed by the cognizant contract CO to the specific contract may perform these functions.

(c) Contract-Level CORs.

Traditionally, EPA has had a multi-tiered structure for CORs. The title "project officer" or "PO," was the CO's primary representative on a basic contract. Under this new COR structure, the PO becomes the contract-level COR. Assistance agreements also have POs. This role is unique from that of the contract-level COR. Questions concerning the training requirements and the duties of assistance agreement POs should be referred to the Office of Grants and Debarment (OGD).

Information about OGD PO training is available on the Agency Intranet at:

<http://intranet.epa.gov/ogd/training.htm>.

As the CO's primary representative, the contract-level COR oversees the TO, or DO, CORs as described below in (d) - Other Types of CORs. In some cases, the contract-level COR may be responsible for both pre-award and post-award contract functions. Appendix C of this policy lists the duties a contract-level COR may perform, if delegated by the CO.

For high complexity and/or high dollar value contracts, the contract-level COR function is extensive and complex. Contract-level CORs usually monitor the overall contract and oversee the work of TO/DO CORs who are managing specific requirements under the contract. For this reason, it is crucial that contract-level CORs are employees who have the requisite experience, knowledge, skills, and abilities to perform their role and assist other CORs.

In circumstances where contract-level CORs will manage the overall contract and contractor oversight will be performed by TO/DO CORs, then the contract-level COR need not possess specialized technical expertise (i.e. in science, engineering, etc.). In these instances, contract-level CORs may seek the advice of their TO/DO CORs, or other Government professionals when

needed to resolve contract issues. However, if the contract-level COR will manage any TO/DO under the contract, then the contract-level COR must possess the technical expertise to perform these functions. Regardless of the situation, contract-level CORs must be mindful that COR duties are inherently governmental functions and decisions must not be made by contractors or parties outside the Government.

For contracts which cover multiple Agency organizations or geographical locations, the CO shall appoint a contract-level COR to administer the basic contract. Each TO/DO under the contract shall have a separate COR appointed to it, and the TO/DO COR will coordinate with the contract-level COR prior to beginning performance of any new TO/DO under the contract.

(d) Other Types of CORs.

The CORs listed in this section are generally involved in post-award activities, overseeing a specific portion of work ordered under a contract. Accordingly, they must be technically proficient in the work the contractor is performing. For example, being technically proficient means having sufficient knowledge and experience to review deliverables, and understand the labor categories and the amount of hours needed to complete the work. OAS recommends these CORs receive on-the-job mentoring from experienced CORs for at least one year before monitoring a TO/DO on their own. This on-the-job mentoring can serve as experience needed for CORs to be certified at Level II. In addition to Agency contracts, these CORs may also function under simplified acquisitions involving complex requirements or orders placed under GSA MAS contracts, GWACs, or MACs. Appendices D-1 and D-2 of this policy list the duties that may be performed by other types of CORs, if delegated by the CO.

(1) Delivery Order (DO) COR - A COR appointed to an indefinite-delivery type contract or other acquisition instrument where contractor supplies are ordered through separately funded DOs awarded by the CO. This term includes CORs functioning on orders for supplies under GSA MAS contracts, GWACs, and MACs (see Appendix D-1).

(2) Task Order (TO) COR - A COR appointed to an indefinite-delivery type contract or other acquisition instrument where contractor tasks or services are ordered through separately funded TOs and awarded by the CO. This term includes CORs functioning on orders for services under GSA MAS Contracts, GWAC, and MAC (see Appendix D-1).

(3) Simplified Acquisition COR - A COR appointed to a simplified acquisition (i.e., at or below the Simplified Acquisition Threshold as defined at FAR 2.101) for the purchase of either supplies or services. Typically, simplified acquisitions do not require a COR. However, for simplified acquisitions that are complex in nature, the CO may determine it is in the Government's interest to appoint a COR. In these cases, the individual appointed as a COR must meet at least the requirements for a COR Level I as stated in Section 1.6.5.10 General FAC-COR Certification Framework.

(5) Foreign Contract COR - A COR may review the work plan and identify any work or projects that will be performed in a foreign country and verify the detail with the award recipient.

(6) *Interagency Acquisition (IA) COR* -

(i) All IA CORs are encouraged to have at least a Level I COR certification where there is any procurement under the IA.

(ii) *For Funds-In IAs*, OAS IA policy guidance governs all procurement actions completed under the IA.

(iii) *For Funds-Out IAs*, an IA COR must maintain at least a Level I COR certification for any IA where procurement is above the Simplified Acquisition Threshold.

(e) *Alternate COR*.

The CO shall appoint an alternate COR to act in the absence of the primary COR. This alternate COR may serve in the absence of the primary COR as needed, such as when the primary COR is on leave or travel. The training and experience requirements for the alternate COR are identical to those of the primary COR, i.e. an alternate Contract-Level COR Level II must meet all the training and experience requirements established in Subsection 1.6.5.10 - FAC-COR Certification Framework for the FAC-COR Level II before appointment.

1.6.5.7 Standards of Conduct as They Apply to CORs

All Government employees must follow the Standards of Ethical Conduct for Employees of the Executive Branch, codified in 5 C.F.R. Part 2635 (1/1/99 Edition) as amended at 64 FR 2421-2422 (Jan. 14, 1999) and 64 FR 13063-13064 (Mar. 17, 1999), which states "In accordance with 5 C.F.R 2638.704, CORs, who are required to complete Form 450, are required to complete the Agency mandatory ethics training each calendar year." A copy of the entire statute is available at the United States Office of Government Ethics Internet site, <http://www.oge.gov/home.aspx>.

CORs are depended on to successfully perform duties that involve the exercise of discretion in a sensitive area of acquisition. This requires following ethical standards of conduct for employees of the Executive Branch and maintaining training as prescribed in the Agency ethical policy. If applicable, CORs must file the Office of Government Ethics Form 450, Confidential Financial Report, with the cognizant Deputy Ethics official. A list of Agency Deputy Ethics officials is available on the Agency Intranet at <http://intranet.epa.gov/ogc/ethics/deos.htm>.

During the COR nomination process, each COR must sign the form EPA 1900-65b (Rev. 12-14) - *Nomination of The Contracting Officer's Representative (COR)* attesting to the statement "If applicable: I have filed the Office of Government Ethics Form 450, Confidential Financial Report, with the cognizant deputy Ethics official." The COR nomination form shall be included in the contract file.

Because of past problems and the sensitivity of this area, in addition to annual Agency ethics training, mandatory FAC-COR certification and continuous learning training, OAS recommends that Agency organizations continue to emphasize standards of conduct, laws and regulations, and conflicts of interest as it relates to Government-Contractor relations. These laws and regulations define what is considered to present a conflict (incompatibility), or an appearance of a conflict, between Government employees' official duties and their outside financial interests and

affiliations (as well as certain financial interests of their spouse, minor or dependent children, outside employers and other entities). Also covered in the concept of "conflict of interest" are matters such as receipt of gifts, outside activities, impartiality, and seeking non-Federal employment.

Financial conflicts are not the only situations in which impartiality may be questioned. For instance, a COR's objectivity may also be affected by a personal relationship with a contractor employee; CORs must recognize that establishing or maintaining a personal relationship with a contractor employee could raise concerns about the COR's objectivity in performing his/her duties. In cases where CORs have personal relationships with contractor employees, the OAS strongly encourages CORs seek the guidance of their Deputy Ethics Official in determining if the situation is or might appear to be a conflict of interest. By reviewing the situation with their Deputy Ethics Official, any concerns can be addressed and resolved in a manner that protects both the employees' and the Government's interests.

In addition to the Standards of Conduct referenced above, CORs must also comply with the contractual regulations applicable to relationships between Government personnel and contractor employees found in FAR 3.101. This section of the FAR reiterates that Government business must be conducted in a manner above reproach with complete impartiality and without preferential treatment. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-Contractor relationships. The Agency has issued EPA Order 1900-1A - Interacting with Contractors, found here: <http://intranet.epa.gov/ohr/rmpolicy/ads/transorders.htm>, which provides general guidance to Federal employees on maintaining proper relationships with contractors.

A relationship between a Government employee and a contractor employee could also raise concerns under FAR Subpart 9.5, Organizational Conflicts of Interest, and applicable EPA acquisition regulations and contract clauses, including EPAAR 1552.209-71 and 1552.209-73, which deal with organizational and contractor employee personal conflicts of interest, respectively. Such concerns could exist, for example, if the relationship affects, or potentially affects, the ability of the contractor to render impartial advice or assistance to the Government, or impairs the objectivity of the contractor employee in performing contract work. If a COR is involved in, discovers, or otherwise learns of a situation that raises such conflict of interest concerns, he or she must consult with the CO. It is the CO's responsibility to review the situation and determine what action could be taken to avoid, neutralize, or mitigate the conflict of interest or potential conflict of interest.

1.6.5.8 COR Responsibilities for Section 508 Compliance

In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. Section 508 (29 U.S.C. §794 d) applies to all Federal agencies when developing, procuring, maintaining, or using EIT, and has enforceable standards with which agencies must comply, including Statements of Work (SOW) or Performance Work Statements (PWS) that require a contractor or

consultant to write, create or produce any products or services that are EIT intended for use in response to a solicitation - including electronic reports, documents, charts, posters, presentations or video material that could be presented in response to a contract.

(a) The COR shall ensure that EIT products or services produced or delivered by contractors or consultants meet applicable Section 508 accessibility standards. The standards cover:

- (1) Software Applications and Operating Systems;
- (2) Web-based Intranet and Internet Information and Applications;
- (3) Web based training;
- (4) Telecommunications Products;
- (5) Videos or Multimedia Products (All videos and multimedia products which EPA produces shall be captioned using open captioning);
- (6) Self-Contained, Closed Products (Products such as copiers, fax machines, and calculators which generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology); and
- (7) Desktop and Portable Computers.

(b) The COR shall notify the CO when EIT products or services produced or delivered are not in compliant with 508 compliance requirements before acceptance. To ensure understanding and compliance with the law, mandatory Section 508 training will be required by all EPA acquisition workforce members, including 1102s, CORs, and FAC P/PM certificate holders.

1.6.5.9 Documenting Past Performance Evaluations in the Contractor Performance Assessment Reporting System (CPARS).

As required by FAR 42.15, past performance evaluations are required for each contract as defined by FAR 2.101 that exceeds the simplified acquisition threshold for supplies, services, research and development, and contingency operations (see FAR 42.15 for past performance reporting requirements for construction and architect-engineer contracts). Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed.

Past performance evaluations are also required for each order that exceeds the simplified acquisition threshold that is placed under GSA MAS Contracts, GWACs, and MACs. For EPA indefinite-delivery contracts, the CO has the discretion to require performance evaluations for the contract-level or for each order in excess of the simplified acquisition threshold.

Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at <http://www.cpars.gov>. CPARS collects assessments of a contractor's performance, both positive and negative, on a given contract for a specific period of time. Each report card is based on objective facts and is supported by program and contract management data. The use of CPARS promotes report card consistency, increases data integrity, motivates improved contractor performance, and improves Government-Contractor communication.

The COR serves as the "Assessing Official Representative" in CPARS with the authority to initiate and update past performance evaluations, but does not have the authority to finalize a past performance evaluation or send the evaluation to the Contractor Representative. The CO serves as the "Assessing Official" in CPARS to validate the proposed past performance evaluation rating and remarks entered by the COR. The CO has "signature" authority for finalizing the past performance evaluation and forwarding the evaluation to the Contractor Representative for review and comment.

The CPARS user's manual is located at:
<https://www.cpars.gov/pdfs/CPARS-Guidance.pdf>

1.6.5.10 FAC-COR Certification Framework.

The EPA Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) is a program that focuses on training, experience, and continuous learning requirements for FAC-COR certification with final approval by the Acquisition Career Manager. The FAC-COR certification is part of the requirements for an employee to be eligible for nomination by a supervisor and appointment in writing by a CO to perform the duties and responsibilities as a COR on an active contract(s). An employee and his/her supervisor may request FAC-COR certification and/or maintenance of FAC-COR certification even if the employee is not currently appointed, by a CO, as a COR for a particular contract(s) at the time of certification.

(a) Program Structure.

EPA's FAC-COR program includes: (1) competency-based core training to achieve certification; (2) experience requirements for Level II and III certifications; and (3) continuous learning to maintain certification. All new certification requests and continuous learning requests/achievement requests must be submitted using FAITAS.

There are three FAC-COR certification levels with different initial certification requirements. The following information describes the different levels:

(1) **Level I** - requires a minimum of 20 hours of initial prescribed acquisition training, no experience, and 16 hours of continuous learning every two years. A Level I COR is generally required for projects with little associated risk, complex procurements below the Simplified

Acquisition Threshold as determined by the CO, firm-fixed-price (FFP) service/supply contracts, and orders placed under GSA MAS contracts, GWACs, or MACs.

(2) **Level II** - requires a minimum of 54 hours of initial prescribed acquisition training, one-year of acquisition-related experience within the last four years, and 40 hours of continuous learning every two years. Level II CORs are generally required for contacts and orders of moderate to high risk and complexity such as time-and-materials (T&M) or labor-hour (LH) contracts, indefinite-delivery indefinite-quantity (IDIQ) contracts, cost reimbursement (CR) contracts, and hybrid contracts (e.g., contracts with CR and FFP elements). See Appendix E-1 for FAC-COR Level II Functional Experience Transcript.

(3) **Level III** - requires a minimum of 66 hours of initial prescribed acquisition training, at least two (2) years of acquisition-related experience on federal contracts within the last 4 years that includes, at a minimum, experience required for the Level II and 40 hours of continuous learning every two years. Level III CORs deal with the Agency's contracts that require significant acquisition investment. These contracts are of moderate to high risk, are of a very complex nature and require a high degree of management oversight. CORs working on these contracts are often called upon to perform significant program management activities and should be trained accordingly. For this reason, these CORs are expected to be recruited from the most experienced CORs already working in the Agency. These most complex contracts support work processes that have been simplified or otherwise redesigned to reduce costs and improve effectiveness of Agency core/priority mission functions, are often performed at a national level, and often support strategic sourcing strategy investments. An example of such contracts are the Capital Planning Investments Control (CPIC) requirements as defined in the Office of Management and Budget (OMB) Circular A-11, Part 7, Exhibit 300, *Planning, Budgeting, Acquisition, and Management of Capital Assets*. CORs assigned to CPIC requirements are required to be Level III certified. The most experienced Level II CORs may be appointed to serve under the direction of a Level III COR as an Alternate COR in order to gain Level III experience. See Appendix E-2 for FAC-COR Level III Functional Experience Transcript.

Appendix F-1 (Level I), F-2 (Level II), and F-3 (Level III) provide OMB approved FAC-COR key competencies, performance skills, and outcomes to assist the CO in determining each level of certification required to support a contract.

(b) General Certification, Nomination and Appointment Information.

(1) *Use of FAITAS.* EPA uses the Federal Acquisition Institute Training Application System (FAITAS) as the official information management system to manage the acquisition workforce certification, training, and recertification for all Federal Acquisition Certification programs. All new certification requests, continuous learning requests, and continuous learning achievement requests must be submitted using FAITAS.

(2) *FAC-COR Certification.* A FAC-COR certified employee has completed the required training, possesses the required experience, has the support of his/her supervisor to maintain the certification and is approved by the Acquisition Career Manager. The EPA Form 1900-65a (Rev. 12-14) *Certification of the Contracting Officer's Representative (COR)* (see Appendix A) must

be signed by the employee and supervisor prior to the employee uploading the form in FAITAS when requesting an initial certification or new certification for an expired/revoked certification. Note: This form is located in FormSmart.

(3) *Maintaining FAC-COR certification.* If an employee does not meet the continuous learning requirements and/or does not submit the Continuous Learning (CL) Achievement Request in FAITAS to maintain the certification, the FAC-COR certification will expire and be revoked in FAITAS. These employees must follow the procedures described in the policy for obtaining a new certification after the previous FAC-COR certification is revoked.

(4) *COR Nomination and Appointment.* A COR is an employee who is FAC-COR certified AND who has been nominated and appointed in writing by an Agency Contracting Officer (CO) on an active contract to perform those duties and responsibilities as described in the COR appointment memorandum. In accordance with FAR 1.604, a COR is a technical representative of the CO. The EPA Form 1900-65b (Rev. 12-14) Nomination of the Contracting Officer's Representative (COR) (see Appendix B) shall be submitted by the COR nominee's supervisor to the CO for approval. Note: This form will be located in FormSmart.

(5) A COR shall provide the supervisor and CO a copy of the CL Achievement Request at the end of each recertification cycle to show that the FAC-COR certification is in good standing.

(6) The supervisor shall request that the CO remove a COR from a contract(s) who allow his/her FAC-COR certification to be revoked. The supervisor may re-nominate these previous CORs to a contract (s) by submitting EPA Form 1900-65b with a copy of the new FAC-COR certification certificate to the CO for appointment.

(c) *Certification Levels, Experience, and Knowledge Requirements.*

Table 1 - FAC-COR Certification Levels, Experience, and Knowledge Requirements shown below, summarizes the certification level, experience, and knowledge requirements for each of the EPA's three certification levels. A combination of required experience, training, and/or professional certifications is necessary for FAC-COR certification.

Table I-FAC-COR Certification Levels Knowledge, Experience, Contract Type, and Training Requirements

LEVEL I	LEVEL II	LEVEL III
General Business Competencies	General Business Competencies	General Business Competencies
<ul style="list-style-type: none"> • Attention to Detail • Decision-Making • Flexibility 	<ul style="list-style-type: none"> • Attention to Detail • Decision-Making • Flexibility 	<ul style="list-style-type: none"> • Attention to Detail • Decision-Making • Flexibility

<ul style="list-style-type: none"> • Influencing/Negotiating • Integrity/Honesty • Interpersonal Skills • Oral Communication • Planning and Evaluating • Problem Solving • Project Management • Reasoning • Self-Management/Initiative • Teamwork • Writing 	<ul style="list-style-type: none"> • Influencing/Negotiating • Integrity/Honesty • Interpersonal Skills • Oral Communication • Planning and Evaluating • Problem Solving • Project Management • Reasoning • Self-Management/Initiative • Teamwork • Writing 	<ul style="list-style-type: none"> • Influencing/Negotiating • Integrity/Honesty • Interpersonal Skills • Oral Communication • Planning and Evaluating • Problem Solving • Project Management • Reasoning • Self-Management/Initiative • Teamwork • Writing
Technical Competencies	Technical Competencies	Technical Competencies
• All Technical Competencies for Level I CORs identified in Appendix D-1 - <i>OMB Key Competencies for CORs</i> .	• All Technical Competencies for Level II CORs identified in Appendix D-2 - <i>OMB Key Competencies for CORs</i> .	• All Technical Competencies for Level III CORs identified in Appendix D-3 - <i>OMB Key Competencies for CORs</i> .
Experience	Experience	Experience
• No experience requirement.	• At least 1 year of acquisition related experience within the last 4 years that includes, at a minimum, experience equivalent to a Level I COR.	• At least 2 years of acquisition related experience on <i>federal</i> contracts within the last 4 years that includes, at a minimum, experience equivalent to a Level II COR. • Demonstrated expertise in the Business and Technical Competencies identified above.
Required Knowledge	Required Knowledge	Required Knowledge
Knowledge of low risk/complexity contracts such as: <ul style="list-style-type: none"> • Simplified Acquisitions • Interagency Agreements • Assisted Acquisitions • FFP contracts/orders 	Knowledge of moderate to high risk/complexity contracts such as: <ul style="list-style-type: none"> • All types listed in Level I • IDIQ contracts • T&M and LH contracts/orders • CR contracts/orders • Hybrid contracts/orders • Works assignments 	Knowledge of highest risk/complexity and mission critical contracts such as: <ul style="list-style-type: none"> • All types listed in Level II • Incentive contracts • Price redetermination contracts • Major systems acquisition • Earned value management • Advanced project management
Required Training (Initial)	Required Training (Initial)	Required Training (Initial)
Must complete a minimum of 20 hours of required COR training prior to certification. Required COR Training Courses: <ul style="list-style-type: none"> • EPA Basic COR Course - 8 hrs. • FAC 018, Green Purchasing for Civilian Acquisition - 2 hrs. • CLM 031, Improved Statement of Work - 4 hrs. • FAC 023, Basic Contracting for GSA Schedules - 4 hrs. • CLC 065, Suspension and Debarment - 1 hr. • FAC 049, Section 508: What Is It & Why Is It Important - 1 hr 	Must complete a minimum of 54 hours of required COR training prior to certification. Required COR Training Courses: <ul style="list-style-type: none"> • CLC 222, COR Online Training - 32 hrs. • EPA Basic COR Training - 8 hrs. • FAC 018, Green Purchasing for Civilian Acquisition - 2 hrs. • CLM 031, Improved Statement of Work - 4 hrs. • FAC 023, Basic Contracting for GSA Schedules - 4 hrs. • CLC 065, Suspension and Debarment - 1 hr. 	Must complete a minimum of 66 hours of required COR training prior to certification. Required COR Training Courses: <ul style="list-style-type: none"> • CLC 222, COR Online Training - 32hrs • EPA Basic COR Training - 8 hrs. • FAC 018, Green Purchasing for Civilian Acquisition - 2 hrs. • CLM 031, Improved Statements of Work - 4 hrs. • FAC 049, Section 508: What Is It & Why Is It Important - 1 hr • HBS 435, Project Management - 2 hrs.

<p>Required training is subject to change by the SPE in accordance with DAU and FAI online curriculum updates and changes. Guidance on Mandatory Training for CORs can be found at: http://oamintra.epa.gov/node/478. This is <u>no cost</u> training.</p>	<ul style="list-style-type: none"> • FAC 049, Section 508: What Is It & Why Is It Important - 1 hr • HBS 435, Project Management - 2 hrs. <p>Required training is subject to change by the SPE in accordance with DAU and FAI online curriculum updates and changes. Guidance on Mandatory Training for CORs can be found at: http://oamintra.epa.gov/node/478. This is <u>no cost</u> training.</p>	<ul style="list-style-type: none"> • CLV 016, Introduction to Earned Value Management - 1 hr. • CLM 016, Cost Estimating - 8 hrs. • CLM 017, Risk Management - 8 hrs. <p>Required training is subject to change by the SPE in accordance with DAU and FAI online curriculum updates and changes. Guidance on Mandatory Training for CORs can be found at: http://oamintra.epa.gov/node/478. This is <u>no cost</u> training.</p>
Required Training (Continuous)	Required Training (Continuous)	Required Training (Continuous)
<p>Must earn a minimum of 16 CLPs through COR training every 2 years to maintain certification.</p> <p>Of the required 16 CLPs:</p> <ul style="list-style-type: none"> • Acquisition Specific Training - 16 hrs. <p>EPA Guidance On Meeting Requirements for CLPs found at: http://oamintra.epa.gov/node/565. This is <u>no cost</u> training.</p>	<p>Must earn a minimum of 40 CLPs through COR training and activities every 2 years to maintain certification.</p> <p>Of the required 40 CLPs:</p> <ul style="list-style-type: none"> • Acquisition Specific Training - 20 hrs. • Acquisition Related Technical Training/Activities - 20 hrs. <p>EPA Guidance On Meeting Requirements for CLPs found at: http://oamintra.epa.gov/node/565. This is <u>no cost</u> training.</p>	<p>Must earn a minimum of 40 CLPs through COR training and activities every 2 years to maintain certification.</p> <p>Of the required 40 CLPs:</p> <ul style="list-style-type: none"> • Acquisition Specific Training - 20 hrs. • Acquisition Related Technical Training/Activities - 20 hrs. <p>EPA Guidance On Meeting Requirements for CLPs found at: http://oamintra.epa.gov/node/565. This is <u>no cost</u> training.</p>

As used in the table above, acquisition specific training is defined as structured educational and training experiences, activities and events that serves to enhance the COR competencies skills for performance outcomes to improve the effectiveness of the Agency contracting pre-award and post-award phases. These phases include acquisition planning, market research, defining requirements, pre-award contract communications, proposal evaluations, contract negotiation, inspection and delivery, contract quality assurance and evaluation, contract administration, contract close-out, contract reporting, and project management. It includes all mandatory training for recertification.

As used in the table above, acquisition related technical training/activities is defined as professional development training/ activities required to support a COR's technical knowledge in their career field to enhance technical performance of their COR duties and responsibilities. Professional development includes formal training courses, participating in professional organizations events (conferences, training, seminars, and workshops); serving in professional association leadership roles; publishing articles related to acquisition in the technical specialty; participating in experiential activities, for example: participation in Technical Evaluation Panels (TEP)-Maximum 20 points per cycle (See OAS's Source Selection Guide for TEP policy information). The number of continuous learning points for these types of training/activities may be granted not to exceed the number of continuous learning points (CLPs) as stated in this

policy's guidance. CORs and supervisors should also seek the advice of the ACM in the assignment of CLP values for activities not listed.

A discussion of required knowledge, experience associated with the contract type, risk, and complexity, initial certification training, and recertification requirements follows.

(d) Certification Requirements.

The FAC-COR certification program includes: (1) competency-based core training for certification; (2) experience requirements for Level II and III certifications for certification; and (3) continuous learning to maintain the initial certification. There is no experience requirement for Level I. A supervisor may request certification and subsequent recertification for any employee with experience performing acquisition and/or acquisition related duties or who might reasonably be called upon to perform such duties in the future.

The required experience for a FAC-COR certification may be gained by performing as a COR previously or by performing acquisition-related activities in private industry prior to entering the federal government or while assisting others staff within the Agency or another Agency with acquisition related functions. Some examples are: writing requirement specifications, Statement of Work or Statement of Objectives; developing quality assurance surveillance plans; on the job mentoring by a Level II or III COR; participating as a subject matter expert on a technical evaluation team or shadowing Remedial Project Managers (RPMs) performing technical work or oversight. s.

(1) New Applicants. New applicants must apply for FAC-COR certification through FAITAS upon completion of all training requirements and documented experience (if applicable). The EPA Form 1900-65a Certification of the Contracting Officer's Representative (COR) must be uploaded into FAITAS as part of supporting documentation. Upon receipt of the certification request by a Bureau Certification Manager (BCM), the COR's certification records will be reviewed to confirm compliance with the training, experience requirement (if applicable), and other supporting documentation for the level of certification requested. If the requesting application is determined to be missing training, certification form, and/or Functional Experience Transcript (if applicable), the BCM will return the certification request to the applicant explaining the reason why the request is being returned or disapproved. If the employee is determined to be eligible for the requested certification level, the request will be routed to the ACM for review and approve/disapprove of the FAC-COR certification in FAITAS at the level requested. If the ACM determines that documentation is missing or more clarification is needed, the request will be returned to the employee or BCM with "remarks." The original FAC-COR certificate issued date in FAITAS will not change upon recertification. Every two years, a "Certificate of Achievement" will be issued in FAITAS for those who have successfully followed the recertification procedures. The Certificate of Achievement keeps the FAC-COR status as "Current". See Table I for initial certification experience and training requirements.

(2) Existing Certified Individuals. Individuals certified prior to October 1, 2013 are grandfathered to meet the certification requirements for FAC-COR at their current level if the current certification is in standing based on meeting the required continuous learning

requirements and issuance of a current “Certificate of Achievement” in FAITAS. FAITAS is the official system of record for maintaining and tracking all FAC-COR training and certifications. The original FAC-COR certificate issued date in FAITAS will not change upon recertification. Every two years, a “Certificate of Achievement” will be issued in FAITAS for those who successfully follow the recertification procedures. The “Certificate of Achievement” keeps the FAC-COR status as “Current”.

(3) *Downgrading FAC-COR Certification Levels.* The supervisor of an existing certified individual is the only individual that can request that a FAC-COR certification be permanently downgraded from a higher level to a lower level. This request must be emailed to the ACM no later than 90 days prior to end of the individual’s recertification period. This is a manual process performed by the ACM. **Note:** In order for the individual to be certified again at the higher grade, the individual must meet all the initial certification requirements for the level requested, and request a new certification for that level in FAITAS.

(4) *Revoked/Expired FAC-COR Certification.* If an individual has a revoked/expired FAC-COR certification it means that the FAC-COR certification has lapsed because the employee failed to achieve the required number of CLPs during the recertification cycle. This happens because one of following reasons:

- (i) The required number of CLPs have not been entered into FAITAS for supervisor approval;
- (ii) The required number of CLPs have been entered into FAITAS and not approved by the supervisor;
- (iii) The required number of CLPs have been entered into FAITAS and approved by the supervisor, but the CL Achievement Request has not been submitted by the individual to the supervisor for approval; or
- (iv) The required number of CLPs has been entered into FAITAS and approved by the supervisor; the individual submitted the CL Achievement Request to the supervisor for approval; but the supervisor has not approved and submitted the CL Achievement Request to the Bureau Continuous Learning Manager (BLCM) for final approval.

(5) *Reinstatement Requests.* All reinstatement requests for revoked/expired FAC-COR certifications must be entered in FAITAS as a **new FAC-COR certification request**. The EPA Form 1900 65a- Certification of Contracting Officer’s Representative (COR,) must be uploaded as part of the request for reinstatement certification. This form can be found in SmartForms. The revoked reinstatement training/experience requirements are listed in Table II below. In the **“Remarks”** section of request enter **“This is a request for Reinstatement.”** These individuals will be issued a new FAC-COR certificate.

Table II: Revoked/Lapsed FAC- COR Levels –Reinstatement Training/Experience Requirements

LEVEL I	LEVEL II	LEVEL III
Experience	Experience	Experience

No Experience Required	Upload a copy of a prior FAC-COR certificate, copy of a prior Achievement Certificate; copy of COR appointment letter, or a memorandum signed by the supervisor that verifies the individual had been a previous COR, include type COR, type contract assigned, and from date-to date individual served as a COR. Upload a copy of one of the above mention document under the experience section in the certification request.	Upload a copy a prior FAC-COR certificate, copy a prior Achievement Certificate; copy of COR appointment letter, or a memorandum signed by the supervisor that verifies the individual had been a previous COR, include type COR, type contract assigned, and from date-to date individual served as a COR. Upload a copy of one of the above mention document under the experience section in the certification request.
Training	Training	Training
Minimum 16 Hours – FAC-COR Training	Minimum 40 Hours – FAC-COR Training	Minimum 40 Hours – FAC-COR Training
FCR 100 - Contracting Officer's Representative Level I Course - 8 hrs. (Online)	CLC 222 - COR Training - 32 hrs. (Online)	CLC 222 - COR Training - 32hrs (Online)
<u>CLC 065</u> - Suspension and Debarment - 1 hr. (Online)	CLM 031 - Improved Statement of Work - 4 hrs. (Online)	CLM 031 - Improved Statement of Work - 4 hrs. (Online)
CLM 031 - Improved Statement of Work - 4 hrs. (Online)	FAC 023 - Basic Contracting for GSA Schedules - 4 hrs. (Online)	FAC 023 - Basic Contracting for GSA Schedules - 4 hrs. (Online)
FAC 023 - Basic Contracting for GSA Schedules - 4 hrs. (Online)		
Note: If a course stated above has been used to in a prior reinstatement request to satisfy this requirement, it cannot be used in a future reinstatement request. Contact the Agency ACM for in-lieu- of courses to meet this requirement.	Note: If a course stated above has been used to in a prior reinstatement request to satisfy this requirement, it cannot be used in a future reinstatement request. Contact the Agency ACM for in-lieu- of courses to meet this requirement.	Note: If a course stated above has been used to in a prior reinstatement request to satisfy this requirement, it cannot be used in a future reinstatement request. Contact the Agency ACM for in-lieu- of courses to meet this requirement.
Note: Training is prescribed by the SPE and subject to changes in accordance with DAU and FAI online curriculum updates and changes. FAC-COR Level I training requirement are located on the OAM Training page at http://oamintra.epa.gov/?q=node/18 , under FAC-COR Program-Reinstatement of Revoked COR Certification. This is <u>NO COST</u> training.	Note: Training is prescribed by the SPE and subject to changes in accordance with DAU and FAI online curriculum updates and changes. FAC-COR Level II training requirements are located on the OAM Training page at http://oamintra.epa.gov/?q=node/18 under FAC-COR Program-Reinstatement of Revoked COR Certification. This is <u>NO COST</u> training.	Note: Training is prescribed by the SPE and subject to changes in accordance with DAU and FAI online curriculum updates and change. FAC-COR Level III training requirements are located on the OAM Training page at http://oamintra.epa.gov/?q=node/18 under FAC-COR Program-Reinstatement of Revoked COR Certification. This is <u>NO COST</u> training.

(e) COR Appointment Based on Certification Level.

(1) A FAC-COR certified individual is not considered a COR until nominated and appointed to serve on an active contract.

(2) The following procedures apply:

(i) A COR certified at Level I may only serve as a Level I COR.

(ii) A COR certified at Level II may serve as a Level I COR without any further actions. The CO may appoint the Level II COR to perform requirements as a Level I COR based on the needs for a specific contract.

(iii) CORs moving from Level II to Level III certification are required to take an additional 17 hours of initial certification training, provide a Level III FAC-COR Functional Experience Transcript to demonstrate the experience requirement for a Level III FAC-COR, and upload EPA Form 1900-65a-*Certification of the Contracting Officer's Representative (COR)* as supporting documentation in a new certification request for FAC-COR Level III.

(iv) A COR certified at Level III may serve as a Level I and Level II COR. The CO may appoint the Level III COR to perform requirements as a Level I COR and/or Level II COR based on the needs for a specific contract.

(f) Reciprocity with Other Certifications (Fulfillment).

EPA recognizes and accepts FAC-COR certifications issued by other Federal civilian agencies and those COR certifications issued under the Defense Acquisition Workforce Improvement Act (DAWIA). Individuals certified with a FAC-COR from another agency or DAWIA COR certification may seek recognition for fulfillment of the FAC-COR requirements at the same level. These individuals must provide proof of prior COR certification and completion of the required number of CLPs to keep the certification current in compliance with the 2-year maintenance requirements for recertification.

To obtain FAC-COR certification at EPA, these individuals must submit a new certification request in FAITAS with the supporting documents (EPA 1900-65a Certification of the Contracting Officer's Representative (COR), FAC-COR certificate; FAC-COR "Achievement Certificate;" and continuous learning documents for the two years' period prior to application, if applicable or EPA 1900-65a-*Certification of the Contracting Officer's Representative (COR)*; DAWIA COR certificate; and continuous learning documents for the two years' period prior to application, if applicable. If an individual has a profile from another Federal civilian agency in FAITAS, the individual must update the account profile information to reflect EPA as the current agency and change his/her supervisor.

Individuals who hold a current Federal Acquisition Certification in Contracting (FAC-C) or Federal Acquisition Certification for Project/Program Management (FAC-P/PM) Level I or Level II are considered to have met the FAC-COR requirements for FAC-COR Level II. Individuals who hold a current FAC-C and/or FAC-P/PM Level III are considered to have met the FAC-COR Level III requirements. Nevertheless, these individuals must submit a request for certification in FAITAS with the supporting documents (EPA 1900-65a Certification of the Contracting Officer's Representative (COR); FAC-C or FAC-P/PM certificate; and current continuous learning "Certificate of Achievement" to obtain reciprocity for FAC-COR

certification. The same procedures above apply for a DAWIA certification in contracting or program/project manager.

Note: The FAC-C, FAC-P/PM, or DAWIA certifications cannot be expired or revoked when requesting Reciprocity with Other Certifications (Fulfillment).

(g) Deferment of Training Requirements.

In unforeseen emergency circumstances, e.g. natural disasters, environmental emergencies, that require the immediate appointment of an individual with a Level II or Level III FAC-COR certification that is revoked/expired in the previous recertification cycle or an individual with a FAC-COR Level II certification that needs to take additional training to meet the FAC-COR Level III certification requirements; the individual's immediate supervisor may request a deferment of the required training course(s) to reinstate a revoked/expired certification or additional training courses for FAC-COR Level III certification. The request must be in writing using the FAC-COR Training Deferment Certification Request Form (see Appendix G), and routed through the respective CO for concurrence and forwarding to the ACM.

The deferment request must address:

- (1) Why the current FAC-COR is revoked/expired,
- (2) The nominee's experience in contract administration,
- (3) The acquisition training the nominee has completed to date,
- (4) Why there is an immediate need to appoint or retain this COR, and
- (5) Plans to fulfill the training requirement.

The CO will review the request. If the CO agrees to defer the training requirement, he or she will indicate concurrence and forward the request to the ACM for review and concurrence/non-concurrence. The form will then be forwarded to the SPE for approval/disapproval. Deferments of training will not be granted beyond a six month period to allow time so training can be completed. If training is not completed by end of six months, the COR's duties shall be suspended and his/her appointment terminated in writing. A copy of the deferment form and any suspension/termination actions shall be maintained in the contract file. All requests for certification must be completed in FAITAS.

(h) Recertification.

Recertification is obtained through ongoing competency based acquisition specific training and acquisition related technical training/activities to meet the CLPs required for maintaining an active certification.

The original FAC-COR certificate issue date in FAITAS will not change upon recertification. Every two years, a "Certificate of Achievement" will be issued in FAITAS for those who have successfully followed the recertification procedures. The Certificate of Achievement keeps the FAC-COR status as "Current", and accordingly enables FAITAS to move the certification forward to the next two year continuous learning period.

COR recertification CLPs are required for the highest FAC-COR Level of certification held prior to the end of the recertification period.

Individuals with a FAC-C and/or FAC-P/PM recertification requirement (80 CLPs) that is due during the same period as the FAC-COR Level I (16 CLPs), Level II (40 CLPs), or Level III (40 CLPs) is due, must meet both FAC program recertification requirements. In such instances, the FAC-COR 16 hours for Level I and 40 CLPs for both Level II and Level III requirements may be met using some of the completed FAC-C and/or FAC P/PM 80 CLP requirements that are due during the same recertification period. Two examples are provided below.

(1) For example, John Smith was FAC-C certified on October 1, 2013 with a recertification date of October 1, 2015 and required to have 80 CLPs. John Smith is also FAC-COR Level II certified with a recertification date of October 1, 2016 and required to have 40 CLPs. John Smith completes 80 CLPs of the 80 CLPs due for FAC-C by September 30, 2015. John Smith can apply 40 CLPs of the 80 CLPs completed for FAC-C recertification to meet the FAC-COR recertification requirements (20 CLPs of acquisition specific training and 20 CLPs of acquisition related technical training/activities) due October 1, 2016. John Smith must submit an “Achievement Request” in FAITAS to the supervisor for approval and the supervisor submit the achievement request for final FAC-COR recertification approval. Also, John Smith must submit an “Achievement Request” in FAITAS to the supervisor for approval and the supervisor must submit the achievement request for final FAC-C recertification approval. Remember, these are two different FAC program certifications.

(2) For example, Jane Smith was FAC-P/PM certified on October 1, 2014 with a recertification date of October 1, 2016 and required to have 80 CLPs. Jane Smith is also FAC-COR Level III certified with a recertification date of October 1, 2016 and required to have 40 CLPs. Jane Smith completes 79 CLPs of the 80 CLPs due for FAC-P/PM by September 30, 2015. Jane Smith can apply 40 CLPs of the 79 CLPs completed for FAC-P/PM recertification to meet the FAC-COR recertification requirement (20 CLPs of acquisition specific training and 20 CLPs of acquisition related technical training/activities) due October 1, 2016. Jane Smith must submit an “Achievement Request” in FAITAS to the supervisor for approval and the supervisor submit the achievement request for final FAC-COR recertification approval. Also, after Jane Smith completes 1-more CLP and the CLP is approved by the supervisor, she must submit an “Achievement Request” in FAITAS to the supervisor for approval and the supervisor must submit the achievement request for final FAC-C recertification approval. Remember, these are two different FAC program certifications.

Individuals should consult with the Bureau Continuous Learning Manager (BLCM) for any clarifications, questions, or concerns in these circumstances.

(i) Continuous Learning Requirements.

FAC-COR certification continuous learning achievement is valid for 2 years from the date of initial certification or recertification. To maintain FAC-COR certification, individuals are required to earn CLPs of skills currency training every 2-years prior to the end of continuous learning (CL) period. The 2-year CL period begins in FAITAS upon approval of an initial

certification request or with the approval of the continuous learning “Achievement Request” at end of a current CL recertification period.

Mandatory training is prescribed by the SPE as described in this policy. Mandatory training is considered acquisition specific training and accounts for up to 12.50 CLPs. The remaining CLPs must be earned through additional trainings, activities, or events to meet the training requirements as prescribed in this policy.

FAC-COR holders are responsible for tracking and maintaining individual training records, monitoring and managing their acquisition training needs, and notifying their immediate supervisors of ongoing training requirements for maintenance of their certifications.

The supervisor monitors the continuous learning requirements to ensure their employees’ FAC-COR certifications remain in good standing.

The ACM and BCLM monitor the continuous learning requirements to ensure certifications remain in good standing.

Continuous learning training/activities/events must have supporting documents when requesting CLPs in FAITAS.

Continuous learning activities must be related to acquisition management, acquisition related technical training/activities/events, or project/program management in support of the COR duties and responsibilities. These activities include, but are not limited to the following:

- (1) Training activities, such as teaching, self-instructed study, and mentoring;
- (2) Courses completed to achieve certification at the next higher level;
- (3) Professional activities, such as attending/speaking/presenting at professional seminars/symposia/conferences, publishing papers, and attending workshops;
- (4) Educational activities, such as formal training and formal academic programs; and
- (5) Experience, such as developmental or rotational assignments.

EPA Guidance on Meeting the Requirement for Continuous Learning Points is located on the OAS’s Training webpage at <http://oamintra.epa.gov/node/565>.

A listing of all CORs with current certifications in FAITAS will be posted on the OAS Training page under Certified COR Listing. EPA’s Certified COR listing may be found on the OAS’s webpage <http://oamintra.epa.gov/?q=node/18> and click: **Search for Acquisition Certifications**. This listing is updated every 14 business days.

To supplement the above-mentioned EPA Certified COR Listing, an existing Lotus Notes database was modified to assist EPA Program Offices to provide organizational-specific information on the status of its certified CORs. This data merges the FAITAS’ certification status with the employee’s Domino directory organizational data. Upon request to the OAS’s OMS-ARM-OAS-AcquisitionTraining@epa.gov group mailbox, a link to this database will be provided.

(j) Mandatory Training for Recertification.

Mandatory training requirements for FAC-COR holders are determined by OAS to comply with statutory and regulatory guidance (such as the Duncan-Hunter National Defense Authorization Act); Agency requirements based on Office of Inspector General reviews and audits; and OAS contract management reviews. *Mandatory training is considered acquisition specific training.* The follow training courses are mandatory beginning October 2, 2014 in accordance with this policy. The following instructions apply:

(1) All new individuals requesting FAC-COR certification must take the mandatory training courses once before the end of the *next* recertification training cycle. Exception: All courses taken in the initial FAC-COR certification process for Level I, Level II, and Level III should not be taken again as part of the mandatory training for recertification.

(i) For example if the FAC-COR holder recertification training cycle ended October 1, 2014, the *next* recertification training cycle starts October 2, 2014 and ends October 1, 2016.

(ii) For example, if the FAC-COR holder is in the middle of a recertification cycle that ends March 1, 2015, the *next* recertification training cycle starts March 2, 2015 and ends March 1, 2017.

(2) All FAC-COR holders requesting recertification due to a revoked (expired) FAC-COR certification must take the mandatory training courses once before the end of their *next* recertification training cycle. If, for example, the current cycle is March 21, 2014 - March 20, 2016, the *next* cycle is March 21, 2016 - March 20, 2018. Exception: All courses taken to reinstate a revoked FAC-COR certification for should not be taken again as part of the mandatory training for recertification.

(3) As of October 2, 2014, all FAC-CORs holders must take the mandatory training courses *once* during their next recertification cycle. Exception: If courses were taken during a previous recertification cycle, these individual shall not retake the completed courses. For recertification, these individuals must find other training/activities/events to meet the required number of CLPs to maintain their current FAC-COR certification level. These individuals will use the following procedures to record prior training completed (procedures are also be located on the OAS training home page at <http://oamintra.epa.gov/?q=node/18>, click FAC-COR Program):

(k) Recording Mandatory Training Taken in a Prior Recertification Period.

(1) For the individuals who have previously taken any or all of the Mandatory Training courses in a prior recertification period (training cycle), they should not retake such training again during the current recertification cycle.

(i) For example, if the FAC-COR holder's recertification training cycle ended October 1, 2014, the next recertification training cycle starts October 2, 2014 and ends October 1, 2016.

(ii) For example, if the FAC-COR holder is in the middle of a recertification training cycle ending March 1, 2015 (i.e., current cycle is March 2, 2013 - March 1, 2015) the next cycle is March 2, 2015 - March 1, 2017.

(2) For recertification, these individuals must find other training/ activities/ events to meet the required number of CLPs to maintain their current FAC-COR certification level.

(3) These individuals must record **all** previously completed training as **one entry** into the FAITAS Continuous Learning Module. This is a 1-point request. The 1-point validates the request and moves it forward in the FAITAS system's workflow process. The following steps explain how to record mandatory training taken in a prior recertification period in FAITAS:

Event Name: Mandatory Training Completed During a Prior Recertification Period

Event Description: (List all prior completed training)

For example:

(Completed April 10, 2012): FAC 034 Interagency Acquisition Basics Course (1 CLPs)

(Completed April 18, 2013): CLC 051 Managing Government Property in the Possession of Contractors (2 CLPs)

(Completed April 20, 2014): FAC 018 Green Purchasing for Civilian Acquisition (2 CLPs)

Event Type: Training (classroom or online)

Start Date: (This is the date you are submitting the request for CLPs)

End Date: (This is the date you are submitting the request for CLPs)

Number of Points Requested: 1

Supporting Documentation: Attach a signed memo with previous courses taken with dates to support this training request for supervisor's approval in FAITAS. **Note:** any courses taken in FAITAS are included in the individual's account training history file.

(4) Table III shows the mandatory training courses that must be taken by all current FAC-CORs holders during their next recertification cycle beginning October 2, 2014, except as mentioned above. Training is prescribed by the SPE and subject to changes in accordance with DAU and FAI online curriculum updates and changes. Updates to mandatory training will be posted on the OAS training home page under FAC-COR Program at <http://oamintra.epa.gov/?q=node/18>. Future mandatory training requirements will be disseminated by email to all current FAC-COR holders. This is NO COST training.

Table III - Mandatory Training for Recertification (Acquisition Specific Training)

Starting October 2, 2014, this training is to be taken only once time during the COR's next recertification cycle, regardless of end date.

CLC 051 Managing Government Property in the Possession of Contractors (2 CLPs) Register for this course at <https://faitas.army.mil/faitas/> (Manage Career-Training-Search for Training-Continuous Learning Modules)

FAC 018 Green Purchasing for Civilian Acquisition (2 CLPs) Register for this course at https://faitas.army.mil/faitas/ (Manage Career-Training-Search for Training-Continuous Learning Modules)
FAC 034 Interagency Acquisition Basics (1 CLP) Register for this course at https://faitas.army.mil/faitas/ (Manage Career-Training-Search for Training-Continuous Learning Modules)
CLC 104 Analyzing Profit or Fee (1 CLP) Register for this course at https://faitas.army.mil/faitas/ (Manage Career-Training-Search for Training-Continuous Learning Modules)
FAC 049: Section 508: What Is It And Why Is It Important To You? (1 CLP) Register for this course at https://faitas.army.mil/faitas/ (Manage Career-Training-Search for Training-Continuous Learning Modules)
CLC 065 Suspension and Debarment (1 CLP) Register for this course at https://faitas.army.mil/faitas/ (Manage Career-Training-Search for Training-Continuous Learning Modules) OR Suspension & Debarment (2 CLPs): View the FAI recorded Acquisition Learning Seminar Video, entitled “ALS: Suspension and Debarment” at http://www.fai.gov/drupal (Training-Video- Suspension & Debarment). Note: You will not get a certificate from FAI for viewing the video. To receive credit for viewing of the video, you have to enter the training in the FAITAS Continuous Learning Module as “Viewing of FAI Suspension & Debarment Training Video” for 2 CLPs. The supervisor must approve the CLP request in FAITAS as verification that the video was watched. Note: If you attended the FAI Suspension & Debarment webcast on February 27, 2013, you have completed this training requirement.
CPARS Overview (2 CLPS) – This training is located at http://www.cpars.gov/ . On the top of the page, Click on the “Training” tab; under “ Instructor Led Web Online Training ”; Click “ more info ”. AND Quality and Narrative Writing (1.25 CLPS) – This training is located at http://www.cpars.gov/ . On the top of the page, Click on the “Training” tab; under “ Instructor Led Web Online Training ”; Click “ more info ”.

1.6.5.11 FAITAS Continuous Learning Module (CLM).

The CLM will automatically document training taken through FAI and the Defense Acquisition University (DAU) with a registration in FAITAS. Employees can upload documents for training taken to outside the FAI/DAU training environment in the CLM. Documents or files cannot be larger than 4 MB.

When the FAC-COR holder adds CLPs in “My Continuous Learning Request” in FAITAS, the file flows to the supervisor for review/approval. Upon completion of the required number of CLPs based on the certification level, the FAC-COR holder must submit the “My Achievement Request” to the supervisor for approval; the supervisor submits the “Achievement Request to the BCLM who will verify if training meets the CLP requirements guidance and approve/disapprove the achievement request for recertification. Once the BCLM approves the “Achievement Request”, the recertification process is complete.

FAITAS creates a Continuous Learning “Certificate of Achievement” which validates recertification achievement of the required number of CLPs to maintain certification into the next recertification cycle. The new CL period does not start until the current CL period ends. For example, for FAC-COR holders with a current CL period of 10/2/2012 to 10/1/2014; when the recertification achievement current period officially closes in FAITAS, the CL period is reset as 10/2/2014 to 10/1/2016.

All FAC-COR holders with a certification date other than 10/1/2010 will not have the same CL cycle for recertification as those with a certificate date of 10/1/2010. These FAC-COR holders' CL cycle will be based on the actual date of certification approved in FAITAS. For all individuals that requested initial certification in FAITAS, the CL period is generated by FAITAS based on the certification approval date. ***The original certification date on the FAC-COR certificate will not change.*** The "Achievement Request" is what shows that a FAC-COR holders is in a current status for maintaining the certification for the next cycle.

1.6.5.10 Performance Accountability.

(a) General Framework.

Sound contract management depends on the effective execution of COR responsibilities. CORs protect the Agency's interests by ensuring that: the government receives services and items that meet contract requirements for quality and quantity, contractor performance is timely, and payments to contractors are appropriate. Given the importance of the COR's duties and responsibilities, the COR must dedicate the necessary resources (e.g., sufficient time and management attention) to, and be accountable for the performance of those duties and responsibilities consistent with the size, scope and complexity of the acquisition(s) under their cognizance.

(b) COR Performance Plans.

As a condition for granting and retaining a delegation of COR authority, the nominating supervisor must certify as part of the nomination package that, at a minimum, the COR duties, responsibilities, and authorities that are delegated to the employee will be appropriately addressed as part of the standards and measures under an established Critical Element(s) of the employee's Performance Plan consistent with the nominating organization's established Performance Appraisal Rating System (PARS). This does not preclude the nominating supervisor's ability to establish a Critical Element(s) specific to the employee's COR duties, responsibilities, and authorities; however, establishment of a separate critical element must follow the organization's established PARS system policy procedures (contact the office of Human Resources Management for procedures).

Supervisors may incorporate the CO's written delegation of COR authority as an attachment to the employee's Performance Plan. In addition, supervisors are encouraged to obtain advisory input from the cognizant CO(s) regarding the employee's performance of COR duties and responsibilities.

(c) COR Nomination Procedures.

The COR nominating supervisor should collaborate with the CO as early as practicable during the acquisition planning process to determine what FAC-COR level certification is needed for a contract (s) prior to nominating a COR nominee. Supervisors initiate the appointment process by nominating a FAC-COR certified employee to serve on a particular contract (s). By signing

Form 1900-65b, the supervisor is certifying that the COR nominee will have appropriate performance standards and measures under an established critical element(s) in the COR nominee's performance appraisal plan that addresses the COR delegated duties and responsibilities, if appointed.

EPA Form 1900-65b is submitted to the CO by the COR nominee's supervisor. The CO will send a signed copy of this form back to the nominating supervisor with approval or deny approval with reason. If approved, the CO will respond to the nomination, in writing, to both the COR nominee and the COR nominee's supervisor with a COR Appointment Memorandum. After the CO approves the EPA Form 1900-65b, the supervisor must ensure that it is uploaded in EAS as a requirements' document in support of the contract planning process (assisting with the development of the technical requirement or quality assurance plan), as well as the evaluation/award/administration phases of the acquisition process.

When nominating an employee from another Federal Agency as a COR, the nominating official shall be the EPA program office manager who will be responsible and accountable for overseeing the nominee's performance. CORs who work for other agencies must:

- (1) Complete the training required by this policy;
- (2) If applicable: file the Office of Government Ethics Form 450, Confidential Financial Report, with the cognizant Deputy Ethics official within their respective Agency; and
- (3) Comply with EPA's contract policies and procedures.

The supervisor need only submit one EPA Form 1900-65b per COR under the contract for each delivery order, or task order under that contract as long as the COR continues to perform duties and responsibilities at the same COR level. A new EPA Form 1900-65b must be submitted when a COR level goes from Level I to Level II or Level II to Level III. Once a COR is appointed under a specific contract, there is no need to submit additional forms for each delivery order, or task order under that contract. The supervisor may need to submit a separate EPA Form 1900-65b for other contract level CORs.

If the nominee is appointed, the CO shall provide written instructions in the COR appointment memorandum regarding the COR's duties and responsibilities under the contract to both the COR and his or her supervisor. For the COR function to be successfully performed, it is imperative that the COR understands the role he or she plays and effectively carries out his or her responsibilities. Therefore, the COR and his/her supervisor must sign the appointment letter acknowledging acceptance of the COR's duties and responsibilities.

(d) COR Appointment Procedures.

When appointing a COR, the CO shall consider the requirements as well as the complexity and dollar value of the acquisition. The COR Appointment Memorandum (see Appendix H) is the first step in delineating the type of COR delegated and what is expected of the COR. When used

effectively, this memorandum is a basis for monitoring COR performance and providing ongoing feedback. The CO shall tailor the appointment memorandum for each type of COR duties and responsibilities required to support the type of acquisition listed.

(1) Before a CO appoints a COR, the CO must be assured that the COR is free of conflicts of interest and has the technical capability to perform the required administrative and oversight functions for the particular acquisition. The supervisor and COR signatures on the EPA Form 1900-65b validates that the COR is free of conflicts of interest for the CO prior to appointment.

(2) The CO will determine the level of COR needed to support a specific contract action (to include complex simplified acquisition procedures orders, purchase orders, and tasks orders placed under GSA MAS contracts, GWACs, and MACs), and will advise the program office of this decision as early into the acquisition process as practical. If an individual is performing pre-award tasks, such as requirements determination, quality assurance plans, and proposal evaluation, it is highly recommended that the CO issue a COR appointment memorandum at that time to address both pre-award and post-award responsibilities. This ensures that the COR is familiar with the requirements of the contract under which he/she will support contract administration activities.

(3) Conditions favoring the need for a COR include, but are not limited to: cost-type contracts; service contracts; high visibility or otherwise sensitive contracts; large, complex, or high-risk awards; awards subject to testing requirements; performance-based acquisitions; etc. COR appointments are required for all architect-engineer (A&E) services, construction contracts, and contracts performed outside the United States. Appointment of a COR is generally not necessary when oversight duties are limited to verifying the quantity and quality of delivered items.

(4) A CO will appoint an individual to be a COR based on his/her determination regarding the technical, professional, and administrative qualifications of the individual. COs may require a COR to complete additional training if deemed necessary for the successful administration of a contract.

(5) CORs cannot re-delegate or assign their acquisition duties to another person. **Note:** The COR's supervisor does not have the authority to "fill-in" for the COR, perform COR duties, oversee, or direct the contractor unless the supervisor has been appointed by the CO as a COR under the contract vehicle. Only a COR who is appointed by the cognizant contract CO may perform these functions.

(6) If a COR or alternate is not available to perform COR duties, the CO is ultimately responsible for ensuring performance and all necessary actions to comply with the terms and conditions of the contract.

(7) One COR cannot sign for another COR since the COR's authority is contract-specific.

(8) The program office must nominate, and the CO must appoint an alternate COR to act in the absence of the COR, such as when the COR is on leave or travel. This is required by OCFO to

ensure that the Agency meets the 30-day turnaround period on invoice approval per FAR Subpart 32.9 - Prompt Payment.

(9) The training and experience requirements for the alternate COR must be identical to those of the COR, e.g., an alternate contract-level COR must meet all the training and experience requirements established for the primary COR.

(10) The CO will define the appointment duration in the written delegation of authority and has the right to revoke the delegation in writing. The COR does not have the authority to re-delegate his or her COR appointment. Appendix H provides a COR Appointment Memorandum template for written appointments and can be tailored as needed. The CO's authority to bind the Government may not be delegated to a COR.

(11) Before the COR signs the COR appointment memorandum, the CO shall ensure that the COR duties, responsibilities, and limitations are explained to the COR and that COR understands these duties, responsibilities, and limitations.

(12) After the CO, COR and COR supervisor have signed the appointment memorandum, the CO must furnish one copy of the signed COR appointment memorandum to the COR with a copy to the COR's supervisor.

(13) The CO shall maintain a signed copy of each COR's Nomination Form, Appointment Memorandum, and all other appointment notification letters in the official contract file.

(14) If a contract has a base and option periods, COs shall verify each COR's certification status before appointment to the base year contract and before exercising any option periods.

(15) The CO should frequently check the EPA's Certified COR listing that is found on the OAS's webpage <http://oamintra.epa.gov/node/421> for current certified CORs. This list includes the CORs name, Certification level, Training cycle start date, Training cycle end date, CLPs approved status, Current certification status as of the date the report is posted. This listing is updated every 14 business days.

(16) The CO should ask the COR for a copy of their current certification and a copy of the current "Achievement Request" (if this is not a new COR certification) before appointment of the COR so this documentation can be included in the contract file. The CO should also request a copy of the "Achievement Request" every continuous learning period to validate recertification is current so this documentation can be included in the contract file. Both documents are part of the COR's certification record which can be downloaded at any time and provided by the COR to the CO. This helps the CO keep oversight on whether a COR has a current certification or not.

1.6.5.11 Program Assistance.

The SPE serves as the overall Agency coordinator for policy, guidance, and certification requirements for the FAC-COR program. FAC-COR holders should contact the ACM on issues

related to certification requirements and availability of training. FAC-COR holders should contact his/her CO for guidance on nomination and appointment requirements and processes. The ACM, in conjunction with the BCMs will provide advice on continuous learning training activities. The OAS Acquisition Policy and Training Branch will provide guidance on FAR and EPAAR requirements.

1.6.5.12 Review of Delegated Duties.

The CO shall meet with the COR in person, if practical, or have a conversation by phone, to ensure that the COR understands his/her duties, roles and responsibilities in regard to the contract vehicle and associated Agency specific processes and requirements for contract management. CORs should be informed that their duties, responsibilities, and obligations are limited to those articulated in their appointment letter and must be exercised in accordance with Agency policy. On a periodic basis, the CO and contract-level COR should discuss key issues related to communication, workflow planning and processes, and contractor performance. This may be accomplished by telephone for remote locations or through regularly scheduled progress meetings. During these meetings, the CO will review and provide feedback on the COR's performance of delegated contract administration functions, such as appropriate use of contractor services, and timely and thorough review of invoices and monthly progress reports. The CO should promptly inform the COR of any problem with the COR's performance of delegated functions and provide an opportunity for the COR to correct the problem. For continuing concerns with performance or conduct, the CO will consult with the COR's supervisor to resolve the problem.

Likewise, the contract-level COR should have periodic status reviews with delivery or task order CORs under his/her contract to discuss contractor performance issues and to monitor the COR's performance of contract administration functions. This assessment may take place when the contract-level COR reviews delivery order, task order, or request packages, work plans, monthly progress reports, vouchers, and close-out documentation from the CORs. The contract-level COR should promptly inform the CO and the affected COR of any problem with the COR's performance of delegated functions and provide an opportunity for the COR to correct the problem. For continuing concerns with performance or conduct, the contract-level COR shall notify the CO who will consult with the COR's supervisor to resolve the problem. Additionally, at any time, the CO has authority to review and monitor the performance of delivery or task order CORs. As stated earlier, supervisors are encouraged to seek feedback from the cognizant CO when preparing the performance evaluation of an employee with COR responsibilities.

1.6.5.13 Rescission of Appointment.

During the administration of a contract, it may be necessary to rescind a COR's appointment. There are three primary reasons such action may be necessary: (1) Administrative (transfer,

retirement, etc.), (2) Poor Performance of appointed duties and responsibilities, or (3) inappropriate ethical conduct.

(a) In these cases, the CO may unilaterally rescind the COR's appointment by notifying the COR and his or her supervisor in writing. Likewise, the COR's immediate supervisor may revoke the COR simply by notifying the CO of the need to replace the COR and nominating a successor COR. In either case, the CO will issue a COR Rescission of Appointment Memorandum (see Appendix I) to the COR through the COR's supervisor. A copy of this letter will be maintained in the official contract file.

(b) Circumstances for removing a COR for performance or conduct reasons include, but are not limited to:

(1) A COR has violated the FAR or Agency policies, guidelines, and/or limitations within the appointment memorandum.

(2) A COR has demonstrated an inability or unwillingness to carry out his or her appointed duties and responsibilities, thus jeopardizing the Government's contractual interest.

(3) A COR has an actual violation of the Standards of Ethical Conduct, an appearance of impropriety, or other ethical issues which preclude the employee from serving as a COR. A COR must attest to ethical standards of conduct for employees of the Executive Branch on the COR nomination form.

(4) A COR has willfully acted with apparent authority and entered into an unauthorized commitment with the contractor.

(c) If the reason necessitating the rescission is not resolved by either the COR, the COR's supervisor, or the Senior Resources Official (SRO), the CO will forward a copy of the rescission appointment letter with all supporting documentation to the OAS Director for a decision of rescission or termination.

(d) Due consideration will be given to the impact on the COR.

(e) Proposed rescission of a COR appointment letter shall be reviewed and approved by the CO's immediate supervisor.

(f) For regional COs, where the CO's supervisor may not be a GS-1102, the proposed rescission of appointment shall be reviewed and approved by the appropriate Manager in the Headquarters Acquisition Division (HQAD) in OAS.

(g) The CO, through the CO's immediate supervisor, will provide a written advance notification letter to the COR and the COR's supervisor indicating the COR's appointment will be rescinded, the anticipated date of the rescission, and the reason(s) for the rescission.

(h) For regional COs, where the CO's supervisor is not a GS-1102, the written advance notification letter will be routed through the HQAD Manager.

(i) The COR will be granted 10-business days from receipt of the rescission notification letter to review and respond to this action. During this time period, the COR may request review of the action by the OAS Director for consideration.

(j) In an extreme situation, the CO may obtain a waiver from the OAS Director to issue an immediate recession of COR's appointment letter. In these cases, the OAS Director's approval to waive the review will be noted in the rescission notification.

(k) If the COR's supervisor wants to re-nominate the COR to the contract at a later date, the supervisor must demonstrate resolution of the situation leading to the rescission, e.g. counseling, formal COR refresher training, on-the-job training, mentoring, and/or closer supervision of the re-nominated COR.

(l) After a proposed re-nomination action is reviewed and approved by the CO's supervisor or PMRCSC Manager, the CO, at his/her discretion, may reappoint the COR to the contract.

1.6.5.14 Removal and Reinstatement from all Agency Acquisitions.

(a) This section concerns the removal of a COR from all Agency contracts for cause, such as performance or conduct reasons. The OAS Director may permanently remove a COR's eligibility to serve on all Agency acquisitions for:

(1) Violation of Federal or Agency acquisition regulations and/or policies; or

(2) Failure to comply with Standards of Ethical Conduct for Employees of the Executive Branch, codified in 5 C.F.R. Part 2635 (1/1/99 Edition) as amended at 64 FR 2421- 2422 (Jan. 14, 1999) and 64 FR 13063-13064 (Mar. 17, 1999).

(b) Requests to remove an employee's COR eligibility may be initiated by the CO, a program office official, or the Inspector General. Such requests must address the grounds for requesting removal in a memorandum to the OAS Director. In coordination with the COR's SRO and supervisor, the Director will investigate the grounds for removal. If a determination is made to remove the COR, the OAS Director will issue a memorandum to the SRO with a copy to the COR and the COR's supervisor. As the Agency's SPE, the OAS Director is the deciding official as to whether an employee may continue to perform contract management functions.

The OAS Director may reinstate employees who have had their COR responsibilities withdrawn upon the written recommendation by the SRO. The recommendation for reinstatement must contain:

(1) A brief description of the circumstances of the withdrawal, and

(2) Steps taken or being taken to remedy the conduct or performance deficiency.

1.6.5.15 Certification Oversight and Administration.

(a) Federal Acquisition Institute Training Application System (FAITAS)

In the revisions to the FAC-COR, September 6, 2011 guidance, OFPP indicates the following: “Agencies are responsible for tracking their COR workforce, including its continuous learning requirements. CORs must ensure their training data is properly entered into the Federal Acquisition Institute Training Application System (FAITAS).”

For all civilian agencies, FAITAS is the official system of records for the FAC-COR program. Per OFPP, all contracting workforce professionals were required to be registered in FAITAS by January 1, 2014.


Individuals are responsible for uploading and maintaining certification supporting documentation in FAITAS. FAC-COR holders must enter and update their training information in FAITAS in a timely manner to reflect current training and certification status.

If FAC-COR holders experience trouble with FAITAS, an online e-help desk ticket must be submitted to FAI at <http://www.fai.gov/drupal/> (FAITAS- Login- Help-Contact Us-FAI Help Desk: Monday - Friday, 7:30 a.m. - 5:30 p.m. Call: (703) 752-9604 - [FAI Help Desk Ticket](#)).

(b) The Agency Certification Manager (ACM) will run FAITAS reports on a regular basis to monitor COR certification status and approve/disapprove pending certification requests.

(c) The Bureau Certification Manager (BCM) will publish a list of CORs with current certification from FAITAS. A listing of all CORs with current certifications in FAITAS will be posted on the OAS Training page under [Certified COR Listing](#). The EPA’s Certified COR listing may be found on the OAS’s webpage <http://oamintra.epa.gov/?q=node/18>- click: Search for Acquisition Certifications. This listing is updated every 14 business days.

APPENDIX A

 CERTIFICATION OF THE CONTRACTING OFFICER'S REPRESENTATIVE (COR)		
<p>This form is uploaded in FAITAS by an employee requesting an initial certification or new certification for an expired/revoked certification. A supervisor may request certification and subsequent recertification for any employee with experience performing acquisition and/or acquisition related duties or who might reasonably be called upon to perform such duties in the future. An employee and his/her supervisor may request FAC-COR certification and/or maintenance of FAC-COR certification even if the employee is not currently appointed, by a CO, as a COR for a particular contract (s) at the time of certification. Reference EPAAG Section 1.6.5-Contracting Officer's Representatives Three-Tiered Program Policy.</p>		
1a. Name of Nominee		b. Title, Series, and Grade
c. Mailing Address: Mail Code: Street Address: City, State & Zip Code:		d. Organization/Office:
		e. Phone Number:
		f. E-mail Address
2. This COR certification is for FAC-COR Level (Check appropriate FAC-COR Level required):		
FAC-COR Level I	FAC-COR Level II	FAC-COR Level III
Initial Certification: No Experience Required	Initial Certification: At least 1-year of acquisition related experience within the last 4-years	Initial Certification: At least 2-years of acquisition related experience on federal contracts with the last 4-years
Initial Certification Required Training: Minimum of 20 Hours	Initial Certification Required Training: Minimum of 54 Hours	Initial Certification Required Training: Minimum of 66 Hours
Revoked or Expired Certification Required Training: 16 Hours	Revoked or Expired Certification Required Training: 40 Hours	Revoked or Expired Certification Required Training: 40 Hours
Note: Training is prescribed by the SPE and subject to changes in accordance with DAU and FAI online curriculum updates and changes. FAC-COR Level I training requirement are located on the OAS Training page at http://oamintra.epa.gov/?q=node/18 , under FAC-COR Program. This is <u>NO COST</u> training.	Note: Training is prescribed by the SPE and subject to changes in accordance with DAU and FAI online curriculum updates and changes. FAC-COR Level II training requirements are located on the OAS Training page at http://oamintra.epa.gov/?q=node/18 under FAC-COR Program. This is <u>NO COST</u> training.	Note: Training is prescribed by the SPE and subject to changes in accordance with DAU and FAI online curriculum updates and change. FAC-COR Level III training requirements are located on the OAS Training page at http://oamintra.epa.gov/?q=node/18 under FAC-COR Program. This is <u>NO COST</u> training.
3. Certification and Experience a. Certification: I have a FAC-COR certification from another federal Agency or DoD DAWIA for level ____ attached (Y/N) ____ b. Experience (if applicable): In an attached FAC-COR Functional Experience Transcript, describe your experience performing acquisition and/or acquisition related duties to support your request for certification. FAC-COR Functional Experience Transcript attached (Y/N) ____ c. I understand that my assignment as COR is dependent upon my Supervisor's nomination and the subsequent appointment by the CO.		
4. I affirm that the employee will have sufficient time to obtain the required continuous learning points to maintain certification at the appropriate FAC-COR Level every 2-years starting the day after the initial/reinstated certification is approved. I understand that if the CLP requirements are not met, the employee's certification will be revoked and the individual will be required to comply with the procedures described in the policy for reinstatement of certification at the same level.		
4a. Name of Employee's Immediate Supervisor	4b. Signature of Employee's Immediate Supervisor	
	4c. Date	4d. Phone Number
5a. Signature of Applicant	5b. Date	

EPA Form 1900-65a (Rev.12-14) All previous editions of this form are obsolete. Electronic and Paper Copies Acceptable.

APPENDIX B



NOMINATION OF THE CONTRACTING OFFICER'S REPRESENTATIVE (COR)

This form is submitted by the COR nominee's supervisor to the cognizant contracting officer (CO) within the Office of Acquisition Solutions or Regional Contracting Office. The CO will send a signed copy of this form back to the nominating supervisor with approval or deny approval with reason. If approved, the CO will respond to this nomination, in writing, to both the COR nominee and the COR nominee's supervisor with a COR Appointment Memorandum. For additional information on the requirements for being a COR. Reference EPAAG 1.6.5 - Contracting Officer's Representatives Three-Tiered Program Policy.

1a. Name of Nominee		b. Title, Series, and Grade	
c. Mailing Address: Mail Code: Street Address: City, State & Zip Code:		d. Organization/Office:	
		e. Phone Number:	
		f. E-mail Address	
2. This COR nomination is for FAC-COR Level (Check appropriate block):			
COR Type	FAC-COR Level I	FAC-COR Level II	FAC-COR Level III
Contract Level COR			
Delivery Order COR			
Task Order COR			
IA COR			
Simplified Acquisition COR			
Foreign Contract COR			
Alternate COR			
Other (Specify):			
3. Certification and Experience			
a. Certification: Current FAC-COR certification level _____ certificate attached (Y/N) _____			
b. Current CL Achievement Certificate (if applicable): Valid to _____ attached (Y/N) _____			
4. Contract Number:			
5. I find that the nominee is technically proficient and is certified at the appropriate FAC-COR Level for this nomination. I affirm that, if appointed, the COR will be provided sufficient time to execute the duties of a COR and to maintain certification through completion of required CLPs for the appropriate FAC-COR Level. I certify, if the COR nominee is appointed, that the PARs agreement for the COR nominee includes applicable language related to COR duties and responsibilities. I will notify the CO immediately if there is a need to change the appointed COR and nominate a replacement COR for the contract(s).			
5a. Name of Nominee's Immediate Supervisor		5b. Signature of Nominee's Immediate Supervisor	
		5c. Date	
		5d. Phone Number	
6. I understand that my appointment as a COR is dependent on adequately performing my COR duties, following ethical standards of conduct for employees of the Executive Branch, and maintaining certification as prescribed in this policy. If any of these conditions are not met, I may be removed as the COR from this contract(s). I cannot redelegate my COR duties. In the event that I am unable to continue performing my COR duties, I will contact my supervisor and the contracting officer immediately. If applicable: I have filed the Office of Government Ethics Form 450, Confidential Financial Report, with the cognizant deputy Ethics official.			
6a. Signature of Nominee		6b. Date	
Contracting Officer's Use Only			
<input type="checkbox"/> I approve of the above nominated COR for FAC-COR level _____.			
<input type="checkbox"/> I deny approval of the above nominated COR for FAC-COR level _____. Reason: _____			
Contracting Officer Name (Print):		Signature:	Date:

EPA Form 1900-65b (Rev.12-14) All previous editions of this form are obsolete. . Electronic and Paper Copies Acceptable

APPENDIX C

DUTIES THAT MAY BE PERFORMED BY CONTRACT-LEVEL CORs, IF DELEGATED BY THE CO

In this Appendix, the Agency-unique steps are listed and applicable Agency guidance is referenced. This list is not intended to be a standard operating procedure for contract management functions. **The COR appointment letter provides the delegated duties and responsibilities of the COR.**

A. Prepare a Requirements Package

1. Forecasting Requirements - Estimate Program Office lead time, available funding, and total acquisition costs, as part of the acquisition planning process and in support of the programming and budgeting process Reference: Environmental Protection Agency Acquisition Guide (EPAAG), Chapter 7-Acquisition Planning, <http://oamintra.epa.gov/node/521>.

2. Communicating with Industry - Follow the standards in the Office of Acquisition Solutions' (OAS) document, "Communicating with Industry" toolkit, can be found on the Knowledge Management SharePoint site, provides general guidelines regarding the types of info that may be shared with the public, primarily in the context of procurement opportunities. Please visit the Knowledge Management SharePoint site at:
https://usepa.sharepoint.com/sites/OARM_Community/oam.kms/Toolkits/Toolkits.aspx

For more information on communicating with industry, the following resources are located at <http://oamintra.epa.gov/node/395>:

- i. EPA Vendor Communication Plan-Revised Mar 2012.doc
- ii. Acquisition Collaboration Toolkit.docx
- iii. Instructions for Posting Collaboration Events.docx
- iv. Program Managers Guide.pdf

3. Acquisition Planning - Perform the tasks as described in EPAAG Chapter 7- Acquisition Planning and Section 7.1.1)-Acquisition Planning. Acquisition planning helps the program office facilitate meeting the Agency's small and disadvantaged business utilization and other socio-economic goals. The EPAAG is located at <http://oamintra.epa.gov/node/521>.

4. Procurement Action Lead Times (PALT) - In order to ensure adequate lead time, acquisition planners should use the Procurement Action Lead Times (PALT) in EPAAG Chapter 7 as a guideline for when to initiate the procurement. The procurement is initiated by submitting an Advanced Procurement Plan (APP) and a Requisition in EAS. Once the procurement is initiated, the Acquisition Planning Team (APT) will work together to perform all aspects of acquisition planning and prepare the final procurement package. Details as to what should be included in the procurement package can be found in EPAAG Chapter 7.

5. Ordering Work Under The Contract - Review procurement packages submitted for delivery orders, or task orders to ensure the package is current, accurate, and complete before forwarding to the CO for action. Ensure that the procurement package identifies vulnerable and sensitive services, potential conflicts of interest, as well as appropriate management controls. Track orders placed under the contract.

B. Government Property

In accordance with Chapter 7 - Acquisition Planning and Chapter 45 - Government Property of the EPAAG, (<http://oamintra.epa.gov/node/521>), identify and justify the use of Government property under the contract. Properly transfer, monitor the use and properly dispose of Government Property under the contract.

C. Property/Facility Management and Real Property

Adhere to all guidelines in the Federal Management Regulation: Subchapter C—Real Property; Part 102-74—Facility Management, when utilizing government facilities during contract administration. This document can be found at:
<http://www.gsa.gov/portal/ext/public/site/FMR/file/Part102-74.html/category/21859/>

D. Technical Assistance

1. In accordance with EPA Acquisition Regulation (EPAAR) Part 1515 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title48/48cfrv6_02.tpl) and OAS's Source Selection Guide, develop technical evaluation criteria, chair the technical evaluation panel, evaluate offers, coordinate the consensus documentation, and prepare the technical evaluation panel report justifying the panel's findings. Draft questions for fact finding, discussions, and pre-negotiation position on technical proposals.
2. Technical Evaluation of Work Plans and Delivery Order Staffing Plans - Prepare detailed findings and recommendations on the reasonableness of the proposed tasks, labor hours and mix, materials and quantities, etc., based on comparison with the performance work statement (PWS) / statement of work (SOW) and the independent Government estimate. In accordance with OAS's Source Selection Guide, conduct evaluations of offers received under multiple award contracts.
3. Provide technical direction to the contractor as prescribed in EPAAR 1552.237-71 Technical Direction and EPA Order 1900-1A, Interacting with Contractors.

E. COR Workplan

1. Set-up a file system containing all relevant documentation including the basic contract, list of CORs under the contract, all correspondence and meetings related to the contract, technical direction, contract deliverables received and reviewed, payment file and other items that will provide an audit trail of the contract-level COR's actions under the contract. Maintain files in accordance with Agency National Records Management Program policy (<http://www.epa.gov/records/policy/index.htm>). Guidance on maintaining EPA Series 202, Contract Management Records, is available on the Intranet at: <http://www.epa.gov/records/policy/schedule/sched/202.htm>

2. Protect information that is prohibited from disclosure by law, such as trade secrets and privileged or confidential commercial or financial information, and certain interagency and intra-agency pre-decisional deliberative communications. Protect information about individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy. Protect records or information compiled for law enforcement purposes, if certain interests would be harmed by release, including when disclosure could reasonably be expected to interfere with enforcement proceedings or to constitute an unwarranted invasion of personal privacy.

F. Post Award Orientation

1. Be familiar with the terms and conditions of the contract and the PWS/SOW. Know who the key players are (CO, CORs, and Contractor's Project Manager) and understand their roles, responsibilities, and delegated authority. Know the proper method for ordering work (delivery order, or task order) under the contract.
2. Coach delivery/task order CORs in appropriate administrative processes and practices for ordering and overseeing work under the contract.

G. Monitoring Contractor Performance

1. In accordance with EPA Order 1900.1A - Interacting with Contractors, provide and document technical direction to the contractor, if permitted by the contract. Guard against inappropriate contractor services, such as personal services and inherently governmental functions.
2. Review monthly technical (i.e. work plans) and financial progress reports. Compare progress to contractor invoice charges. Consult with the CO on any potential problems identified through such reviews.
3. Know the standards of conduct that apply to employees of the executive branch. Treat contractors fairly and impartially. Avoid personal conflicts of interest, and prohibited activities, such as unauthorized commitments, directed subcontracting, and personal services.

H. Inspection and Acceptance

Ensure the timeliness and acceptability of all deliverables submitted by the contractor to ensure that the Government receives the supplies or services for which it is paying. Perform inspection of completed deliverables and certify acceptance or non-acceptance of deliverables that do not meet the contract requirements.

I. Past Performance

1. As required by FAR 42.15, complete contractor performance evaluations electronically by use of the Contractor Performance Assessment Reporting System (CPARS). The website for the System is <http://www.cpars.gov/>
2. For award fee contracts, accurately and promptly complete Performance Evaluation Reports, participate on award fee panels, and apply award fee factors.
3. In conjunction with the CO, provide documentation to the Office of Grants and Debarment concerning performance and related problems. Report any indicators of fraud and other misconduct to the CO, the Inspector General, and the Office of Grants and Debarment.

J. Modifications

Prepare purchase requests for modifications including appropriate documentation, such as a revised PWS and cost estimate. Document evaluation of the contractor's proposal (e.g, of the labor hours, materials, etc., incurred or proposed for the modification). Utilize EAS for submission of PR packages.

K. Options

Determine the need for contract options when planning an acquisition. At least 120 days prior to the required date of preliminary notice as set forth in the contract, recommend whether to exercise an option or not. Obtain the necessary commitment of funds. In a timely manner, provide the CO with a written recommendation indicating if the option should be exercised and supporting this decision in accordance with FAR 17.207.

L. Delays

Notify the CO about a delay in the delivery or performance schedule under the contract and the technical impact of this delay. Assist the CO in evaluating the contractor's response.

M. Stop Work

Identify potential conditions to stop work. If appropriate, recommend the CO issue a stop work order. Assist in discussions with the contractor and recommend to the CO when work can be resumed.

N. Claims

Notify the CO of potential disputes under the contract. Assist the CO in resolving disputes and in processing formal claims

O. Remedies

Notify the CO of performance failures and provide technical assistance to the CO, as appropriate.

P. Termination

Identify events that may lead to contract termination. Provide sufficient information to support pursuing the appropriate termination procedure.

Q. Payment

1. As detailed in EPAAG 32.9.1, review contractor invoices and approve for payment. If appropriate, suspend costs using EPA Form 1900-68.
2. Track funds expended against contract ceilings.
3. Maintain records on current billing/final indirect cost rates under the contract. Ensure contractor invoices reflect the appropriate rates.

R. Closeout

As detailed in the EPAAG 4.8.1, notify the CO when contractor performance is completed under the contract. Assist with closeout procedures.

APPENDIX D-1

DUTIES THAT MAY BE PERFORMED BY OTHER TYPES OF CORs - DELIVERY (DO) /TASK ORDER (TO) COR, IF DELEGATED BY THE CO

In this appendix, the Agency-unique steps are listed and applicable Agency guidance is referenced. The duties described below are meant to provide an overview of the types of functions performed by DO /TO CORs. This list is not intended to be a standard operating procedure for contract management functions. **The COR appointment letter provides the delegated duties and responsibilities of the COR.**

A. Prepare a Requirements Package

1. Acquisition Planning - Perform the tasks as described in the Environmental Protection Agency Acquisition Guide (EPAAG) Chapter 7 - Acquisition Planning and Section 7.1.1 - Acquisition Planning. Acquisition planning helps the program office facilitate meeting the Agency's small and disadvantaged business utilization and other socio-economic goals. The EPAAG is located at <http://oamintra.epa.gov/node/521>.
2. Procurement Action Lead Times (PALT) - In order to ensure adequate lead time, acquisition planners should use the Procurement Action Lead Times (PALT) in EPAAG Chapter 7 as a guideline for when to initiate the procurement. The procurement is initiated by submitting an Advanced Procurement Plan (APP) and a Requisition in EAS. Once the procurement is initiated, the Acquisition Planning Team (APT) will work together to perform all aspects of acquisition planning and prepare the final procurement package. Details as to what should be included in the procurement package can be found in EPAAG Chapter 7.
3. Ordering Work Under The Contract - Review procurement packages submitted delivery orders, or task orders to ensure the package is current, accurate, and complete before forwarding to the CO for action. Ensure that the procurement package identifies vulnerable and sensitive services, potential conflicts of interest, as well as appropriate management controls. Track orders under the placed contract.

B. Government Property

In accordance with Chapter 7 - Acquisition Planning and Chapter 45 - Government Property of the EPAAG, identify and justify the use of Government property under the contract. Properly transfer, monitor the use and properly dispose of Government Property under the contract.

C. Government Owned Facility

Adhere to all guidelines in the Federal Management Regulation: SUBCHAPTER C—REAL PROPERTY; Part 102-74—Facility Management, when utilizing government facilities during contract administration. This document can be found at <http://www.gsa.gov/portal/ext/public/site/FMR/file/Part102-74.html/category/21859/>.

D. Technical Assistance

Technical Evaluation of Work Plans and Task Order Staffing Plans - Prepare detailed findings and recommendations on the reasonableness of the proposed work, labor hours and mix, materials and quantities, etc., based on comparison with the Performance Work Statement (PWS) and the independent Government cost estimate. In accordance with Chapter 16- Types of Contracts, of the EPAAG, conduct evaluations of offers received under multiple award contracts.

1. In accordance with EPA Acquisition Regulation (EPAAR) Part 1515 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title48/48cfrv6_02.tpl) and OAS's Source Selection Guide, develop technical evaluation criteria, chair the technical evaluation panel, evaluate offers, coordinate the consensus documentation, and prepare the technical evaluation panel report justifying the panel's findings. Draft questions for fact finding, discussions, and pre-negotiation position on technical proposals.
2. Technical Evaluation of Work Plans and Delivery Order Staffing Plans - Prepare detailed findings and recommendations on the reasonableness of the proposed tasks, labor hours and mix, materials and quantities, etc., based on comparison with the performance work statement (PWS) / statement of work (SOW) and the independent Government estimate. In accordance with OAS's Source Selection Guide, conduct evaluations of offers received under multiple award contracts.
3. Provide technical direction to the contractor as prescribed in EPAAR 1552.237-71 Technical Direction and EPA Order 1900-1A, Interacting with Contractors.

E. COR Work plan

1. Set-up a file system containing all relevant documentation including the basic contract, internal correspondence, technical direction, and contract deliverables received and reviewed payment file and other items that will provide an audit trail of the actions on the acquisition. Maintain files in accordance with Agency National Records Management Program policy (<http://www.epa.gov/records/policy/index.htm>). Guidance on maintaining EPA Series 202, Contract Management Records, is available on the Intranet at <http://www.epa.gov/records/policy/schedule/sched/202.htm>.
2. Protect information that is prohibited from disclosure by law, such as trade secrets and privileged or confidential commercial or financial information, and certain interagency and intra-agency pre-decisional deliberative communications. Protect information about individuals when disclosure would constitute a clearly unwarranted invasion of personal privacy. Protect records or information compiled for law enforcement purposes, if certain interests would be harmed by release, including when disclosure could reasonably be expected to interfere with enforcement proceedings or to constitute an unwarranted invasion of personal privacy.

F. Post Award Orientation

Be familiar with the terms and conditions of the contract and the PWS/SOW. Know who the key players are (CO, CORs, and Contractor's Project Manager) and understand their roles, responsibilities, and delegated authority. Know the proper method for ordering work (delivery order, or task order) under the contract.

G. Monitoring Contractor Performance

1. In accordance with EPA Order 1900.1A, Interacting with Contractors, and the terms of the acquisition, provide and document technical direction to the contractor. Guard against inappropriate contractor services, such as personal services and inherently Governmental functions.
2. Progress Reports - Review monthly technical and financial progress reports. Compare progress to contractor invoice charges. Consult with the contract-level COR on any potential problems identified through such reviews.
3. Know the standards of conduct that apply to employees of the executive branch. Treat contractors fairly and impartially. Avoid personal conflicts of interest, and prohibited activities, such as unauthorized commitments, directed subcontracting, and personal services.

H. Inspection and Acceptance

Ensure the timeliness and acceptability of all deliverables submitted by the contractor to ensure that the Government receives the supplies or services for which it is paying. Perform inspection of completed deliverables and certify acceptance or non-acceptance of deliverables that do not meet the contract requirements.

I. Past Performance

1. Assist the contract-level COR with compiling a record of the contractor's past performance.
2. For award fee contracts, accurately and promptly complete Performance Evaluation Reports, participate on award fee panels, and apply award fee factors.
3. In conjunction with the CO and contract-level COR, provide documentation to the Office of Grants and Debarment concerning performance and related problems, as appropriate. Report any indicators of fraud and other misconduct to the contract-level COR, CO, the Inspector General, and Office of Grants and Debarment.

J. Modifications

Prepare purchase request for modifications or amendments to the delivery order, or task order, including appropriate documentation, such as revised PWS/SOW and cost estimate. Document

evaluation of the contractor's proposal (e.g., of the labor hours, materials, etc., incurred or proposed for the modification).

K. Options

Requests to exercise options are usually reserved for the contract-level COR.

L. Delays

Notify the contract-level COR about a delay in the delivery or performance schedule under the contract and the technical impact of this delay. Assist the contract-level COR in evaluating the contractor's response.

M. Stop Work

Identify potential conditions to stop work. If appropriate, recommend the CO and contract-level COR issue a stop work order. Assist in discussions with the contractor and recommend to the CO and contract-level COR when work can be resumed.

N. Claims

Notify the contract-level COR of potential disputes under the contract. Assist the CO and contract-level COR in resolving disputes and in processing formal claims.

O. Remedies

Notify the contract-level COR of performance failures and provide technical assistance to the CO and contract-level COR, as appropriate.

P. Termination

Identify events that may lead to contract termination. Provide sufficient information to support pursuing the appropriate termination procedure.

Q. Payment

1. As detailed in EPAAG 32.9.1, review contractor invoices and approve for payment. If appropriate, recommend suspension of costs using EPA Form 1900-68.
2. Track funds expended versus funds remaining on the delivery order, or task order. Notify the contract-level COR if additional funds will be required.

APPENDIX E-1

FAC-COR Level II Functional Experience Transcript
(Required for FAC-COR Level II Certification Request)

PART A – APPLICANT IDENTIFICATION

(Complete all information)

Name (Last, First, Middle Initial): _____

Title, Series, Grade: _____

E-mail Address: _____ **Phone:** _____ **Fax:** _____

Organization Name: _____

Organization Address: _____

Supervisor's Name: _____

What type(s) of contract(s) are you being nominated, if applicable?

☐ **Information Technology**

☐ **Superfund**

☐ **Services**

☐ **Other Type Contract (Please Specify):**

☐ **NA-Requesting Certification Only**

PART B – EXPERIENCE

Please provide employment dates, agency/firm, position title, and describe your experience to support each competency listed below.

FAC-COR Level II requires at least 1-year of acquisition related experience within the last 4 years. Experience could have been gained by Performing or Shadowing a more experienced individual in the performance of these competencies in a private or public work environment.

Professional Experience Profile for FAC-COR Qualifications:

☐ **FAC-COR Level II:** My experience includes at least 1 year of acquisition related experience within the last 4 years. My knowledge and abilities applicable to the FAC-COR Level II competencies are described in the narratives below:

Competency 1: General Business Competencies For All COR Levels:

****Active Listening **Attention to Detail ** Critical Thinking **Decision-Making **Flexibility**
***Influencing/Negotiating **Integrity/Honest **Interpersonal Skills **Oral Communication**
****Planning and Evaluating **Problem Solving **Project Management **Reasoning **Self-**
Management/Initiative Teamwork** Writing**

- Employment dates:
- Agency/Firm:
- Position Title:
- Describe your experience related to the competencies stated above

Competency 2: Acquisition Planning: Assist in determining whether a written source selection plan is necessary, and if so, properly documenting the source selection planning or acquisition strategy; Assist in the selection of the most appropriate method of payment that will best

minimize the Government's overhead: Assist in determining whether to provide for Government financing, and, where necessary, the method of financing to use; Assist in the preparation of un-priced orders and contracts requirements ; Assist in determining whether and how to provide for recurring requirements: Assist in determining appropriate contract type(s) to support requirement: Task and Delivery Order Contracting- Assist in determining the appropriate vehicles and submitting work package to request work under the contract.; Ability to advise customers on their acquisition-related roles and acquisition strategies needed to assure that supplies and services are available to meet mission requirements.:

- Employment dates:
- Agency/Firm:
- Position Title:
- Describe your experience related to the competency stated above

Competency 3: Market Research (Understanding the Marketplace): Conduct, collect, and apply market based research to understand the market place/requirement to identify the sources for a supply or service, the terms and conditions under which those goods/services are sold to the general public: Gather all information related to the potential sources of an acquisition as well as, for commercial items, the terms and conditions under which the sources sell the goods and/or services involved: Understanding of industry trends and ability to research and find available sources of supply and/or services: Assist in determining whether a warranty is appropriate for a specific acquisition including nature and use of the supplies or services; the cost of applying a warranty and any issues with administration and enforcement: Ability to identify a potential ethical conflicts of interest and how to avoid the conflict; Understanding available sources of information (e.g., internet, spreadsheets) to efficiently conduct sufficient market research.

- Employment dates:
- Agency/Firm:
- Position Title:
- Years of Experience (Start Month/Year and End Month/Year):
- Briefly describe your experience relating to the competency stated above

Competency 4: Defining Government Requirements in Commercial/Non-Commercial

Terms: Writing Statements of Work - Create statements of work, Statement of Objectives and other related documents: Conducting Needs Analysis and Preparing Requirements Document- Performing an analysis, based on standard methodology, to identify all requirements and obligations in order to assist in the development of requirements documents; Assist with the development of an appropriate acquisition strategy; Understands what is required by the FAR and agency FAR supplement (as applicable), with regard to pricing information for the specific type of contract in order to assist in determining what pricing information to require from offerers. Assist with developing independent cost estimates for requirements.

- Employment dates
- Agency/Firm:
- Position Title:
- Describe your experience related to the competency stated above

Competency 5: Effective Pre-Award Communication: Recommend additional methods of publicizing the proposed procurement when appropriate; Recommend appropriate requirements

be put into solicitations for subcontracting or make-or-buy situations; Assist in the preparation of a written solicitation, providing guidance as needed in the selection of the appropriate provisions and clauses for the requirement; Assist with the pre-quote, pre-bid, or pre-proposal conference when appropriate and maintain an accurate record of the meeting; Provide input into the amendment or cancelation of a solicitation when it is in the best interest of the Government and/or Agency.

- Employment dates:
- Agency/Firm:
- Position Title:
- Describe your experience related to the competency stated above

Competency 6: Technical Analysis of Proposals: Apply non-price factors in evaluating quotations, proposals, and past performance: Participates in meeting to clearly document reasoning behind proposed evaluation; Ability to demonstrate, reinforce, and promote ethical behavior on Federal conflicts of interest restrictions and ethical conduct as a central element of the procurement environment; Participates in technical evaluation panels.

- Employment dates:
- Agency/Firm:
- Position Title:
- Describe your experience related to the competency stated above

Competency 7: Negotiation; Assist CO in preparing a negotiation strategy that will permit negotiators to maximize the Government's ability to obtain best value; Assist CO in preparing for a negotiation session; Serve as a consultant to the CO during negotiations; Assist in determining and documenting the capability of a vendor to effectively perform the terms and conditions of the contract..

- Employment dates:
- Agency/Firm:
- Position Title:
- Describe your experience related to the competency stated above

Competency 8: Effective Contract Management: Prepare appropriate documentation in support of a potential contract modification/change and provide justification to the CO for consideration; Prepare and submit technical work package to request work under the contract; to perform a financial analysis of the contract; Inspect and accept deliveries and services by inspecting deliverables and monitoring services for conformance with contract/ order/agreement terms and conditions, and accept or reject them; Ensures compliance and completion of the vendor operations, including the preparation of any forms (ex. Material Inspection and Receiving Reports); Process inspection report as supporting documentation for payment and maintain documentation of all inspections performed including disposition of the results; Ensure that invoice properly aligns with delivered services and products received and accepted; Assist with contract close-out requirements. Review vendor invoices and recommend approval or disapproval promptly in accordance with FAR 42.8 Disallowance of Costs and supplementary policies.

- Employment dates:
- Agency/Firm:

- Position Title:
- Describe your experience related to the competency stated above

Competency 9: Performance Management: Ensures consistency of appropriate quality assurance requirements as they relate to the contract terms and conditions; Validates/verifies adherence to specified requirements through administration activities; monitors and documents vendor performance for compliance with the terms and conditions of the contract; Recommend the appropriate rating criteria for the vendor's past performance evaluation using the prescribed past performance system; review and discuss vendor's past performance evaluations with the appropriate officials; Provide feedback to the vendor and prompt input to the CO recommending a technical course of corrective action. Trained in the Use of the EPA's Acquisition System (EAS) and obtained an EAS Account; Understands the need to document vendor past performance in the Contractor Performance Assessment Reporting System (CPARS)
Employment dates:

- Agency/Firm:
- Position Title:
- Describe your experience related to the competency stated above

PART C – SIGNATURE

I certify that the information provided is accurate and complete in support of this request for certification.

Applicant's signature _____ Date _____

Supervisor's signature _____ Date _____

APPENDIX E-2

FAC-COR Level III Functional Experience Transcript
(Required for FAC-COR Level III Certification Request)

PART A – APPLICANT IDENTIFICATION

(Complete all information)

Name (Last, First, Middle Initial): _____

Title, Series, Grade: _____

E-mail Address: _____ Phone: _____ Fax: _____

Organization Name: _____

Organization Address: _____

Supervisor's Name: _____

What type(s) of contract(s) are you being nominated, if applicable?

☐ Information Technology

☐ Superfund

☐ Services

☐ Other Type Contract (Please Specify): _____

☐ NA-Requesting Certification Only

PART B – EXPERIENCE

Please provide employment dates, agency/firm, position title, and describe your experience to support each competency listed below.

FAC-COR Level III requires at least 2-years of acquisition related experience on federal projects within the last 4 years.

Professional Experience Profile for FAC-COR Qualifications:

☐ FAC-COR Level III: My experience includes at least 2-years of acquisition related experience within the last 4 years on *federal* projects. My knowledge and abilities applicable to the FAC-COR Level III competencies are described in the narratives below:

Competency 1: General Business Competencies For All COR Levels

****Active Listening **Attention to Detail ** Critical Thinking **Decision-Making **Flexibility
 *Influencing/Negotiating **Integrity/Honest **Interpersonal Skills **Oral Communication
 **Planning and Evaluating **Problem Solving **Project Management **Reasoning **Self-
 Management/Initiative** Teamwork** Writing**

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competencies stated above:

Competency 2: Acquisition Planning: Assist in determining whether a written source selection plan is necessary, and if so, properly documenting the source selection planning or acquisition strategy; Assist in the selection of the most appropriate method of payment that will best minimize the Government's overhead: Assist in determining whether to provide for Government

financing, and, where necessary, the method of financing to use; Assist in the preparation of un-priced orders and contracts requirements; Assist in determining whether and how to provide for recurring requirements: Assist in determining appropriate contract type(s) to support requirement: Task and Delivery Order Contracting- Assist in determining the appropriate vehicles and submitting work package to request work under the contract; Ability to advise customers on their acquisition-related roles and acquisition strategies needed to assure that supplies and services are available to meet mission requirements.:

Employment dates:

Agency/Firm:

Position Title:

Describe your experience relating to the competency stated above:

Competency 3: Market Research (Understanding the Marketplace): Conduct, collect, and apply market based research to understand the market place/requirement to identify the sources for a supply or service, the terms and conditions under which those goods/services are sold to the general public: Gather all information related to the potential sources of an acquisition as well as, for commercial items, the terms and conditions under which the sources sell the goods and/or services involved: Understanding of industry trends and ability to research and find available sources of supply and/or services: Assist in determining whether a warranty is appropriate for a specific acquisition including nature and use of the supplies or services; the cost of applying a warranty and any issues with administration and enforcement: Ability to identify a potential ethical conflicts of interest and how to avoid the conflict; Understanding available sources of information (e.g., internet, spreadsheets) to efficiently conduct sufficient market research.

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 4: Defining Government Requirements in Commercial/Non-Commercial Terms: Writing Statements of Work - Create statements of work, Statement of Objectives and other related documents: Conducting Needs Analysis and Preparing Requirements Document- Performing an analysis, based on standard methodology, to identify all requirements and obligations in order to assist in the development of requirements documents; Assist with the development of an appropriate acquisition strategy; Understands what is required by the FAR and agency FAR supplement (as applicable), with regard to pricing information for the specific type of contract in order to assist in determining what pricing information to require from offerers.

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 5: Effective Pre-Award Communication: Recommend additional methods of publicizing the proposed procurement when appropriate. Recommend appropriate requirements be put into solicitations for subcontracting or make-or-buy situations; Assist in the preparation of a written solicitation, providing guidance as needed in the selection of the appropriate provisions

and clauses for the requirement; Assist with the pre-quote, pre-bid, or pre-proposal conference when appropriate and maintain an accurate record of the meeting; Provide input into the amendment or cancelation of a solicitation when it is in the best interest of the Government and/or Agency.

Employment dates:

Agency/Firm:

Describe your experience related to the competency stated above:

Competency 6: Technical Analysis of Proposals: Apply non-price factors in evaluating quotations, proposals, and past performance: Participates in meeting to clearly document reasoning behind proposed evaluation; Ability to demonstrate, reinforce, and promote ethical behavior on Federal conflicts of interest restrictions and ethical conduct as a central element of the procurement environment: Participates in technical evaluation panels.

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 7: Negotiation: Assist CO in preparing a negotiation strategy that will permit negotiators to maximize the Government's ability to obtain best value; Assist CO in preparing for a negotiation session; Serve as a consultant to the CO during negotiations; Assist in determining and documenting the capability of a firm to effectively perform the terms and conditions of the contract.

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 8: Effective Contract Management: Prepare appropriate documentation in support of a potential contract change and provide justification to the CO for consideration; Prepare and submit technical work package to request work under the contract; to perform a financial analysis of the contract; Inspect and accept deliveries and services by inspecting deliverables and monitoring services for conformance with contract/ order/agreement terms and conditions, and accept or reject them; Ensures compliance and completion of the vendor operations, including the preparation of any forms (ex. Material Inspection and Receiving Reports); Process inspection report as supporting documentation for payment and maintain documentation of all inspections performed including disposition of the results; Ensure that invoice properly aligns with delivered services and products received and accepted; Assist with contract Close -out requirement; Review vendor invoices and recommend approval or disapproval promptly in accordance with FAR 42.8 Disallowance of Costs and supplementary policies.

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 9: Performance Management: Ensures consistency of appropriate quality assurance requirements as they relate to the contract terms and conditions; Validates/verifies adherence to specified requirements through contract administration activities; monitors and documents vendor performance for compliance with the terms and conditions of the contract; Recommend the appropriate rating criteria for the vendor's past performance evaluation using the prescribed past performance system; review and discuss vendor's past performance evaluations with the appropriate officials; Provide feedback to the vendor and prompt input to the CO recommending a technical course of corrective action; Document vendor past performance in Contractor Performance Assessment Reporting System (CPARS)

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 10: Developing a Business Case: Prepare and document a business case for a discretionary or nondiscretionary project; Evaluate business cases using quantitative and qualitative criteria; Compare business cases based on cost/benefits; Prioritize business cases for the purpose of building a project schedule.

Employment dates:

Agency/Firm:

Position Title:

Briefly describe your experience related to the competency stated above:

Competency 11: Managing Projects/Programs: Performs/manages project/programs; Possesses fundamental project/ program management skills, concepts and techniques; Ability to link project/program goals and objective to clear, compelling stakeholder needs; Develop work breakdown structures; Set realistic measurable objectives and ensure positive result; Estimate project/program costs and schedules using proven techniques; Establish dependable project/program controls and monitoring system

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 12: Managing Scheduling and Control: Use Microsoft Project or project tool to manage scheduling and control of a project/program; Use the work breakdown structure to develop a network diagram; Calculate schedules using Project Evaluation Review Technique (PERT)/ Critical Path Method (CPM); Identify, assign, and tabulate requirements; Predict costs and work time using specific levels and estimate types; plan for contingencies and anticipate variations; Predict future project performance based on historical data; Monitor project changes and close-out projects on time

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 13: Risk Management: Determine risk mitigation methods to prepare for project risk management; Prepare a risk management plan to guide your risk approach; Integrate risk management techniques and results into a balanced project management approach; Use multiple techniques to identify and document risks; Perform qualitative risk analysis to prioritize risks for response and monitoring; Perform quantitative risk analysis to assess risk to the overall project cost, schedule, and scope objectives; Incorporate expected value, probability, and distribution into your risk analysis; Estimate and characterize the impact and timing of risks on a project; Determine and implement appropriate risk strategies based on risk analysis and complexity of contract/project; Monitor and control identified and emerging risks based on risk plan and project execution results; Communicate risks effectively to all project stakeholders

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 14: Earned Value Management (EVM): Cost Estimating: Prepare an action plan and create an immediate impact to the organization's ability to effectively control projects; Use tools for managing data associated with earned value management/cost estimating; Use some type of management system as an integrated project management tool to facilitate improved planning and control of cost, schedule and work scope; Use cost estimating processes, methods, and techniques to manage and control project costs, schedules, and performance; Indicate work progress in an objective way within and across projects; Analyze resource needs for management, including planning for an EVM/cost management program linked to risk; Conduct EVM/cost estimating analysis and implement changes based on analysis results; Use Agency policy/instructions for planning, programming, budget development, and budget execution; perform an EVM or Cost Estimating analysis for a major contract/project.

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

Competency 15: Management of Contractor-Held Property: Monitor the requirements for managing government-owned property to be used by or placed in the custody of contractors; Understands property management responsibilities of the government and property management responsibilities and functions of the contractor for contract monitoring and management.

Employment dates:

Agency/Firm:

Position Title:

Describe your experience related to the competency stated above:

PART C – SIGNATURE

I certify that the information provided is accurate and complete to supports the request for certification.

Applicant's signature _____ Date _____

Supervisor's Signature _____ Date _____

APPENDIX F-1
OMB APPROVED KEY COMPETENCIES FOR CORs
(FAC-COR LEVEL I)

These essential competencies are required for Contracting Officer's Representatives (CORs) form the foundation for the knowledge, skills, and abilities to effectively perform as a COR. The FAC-COR Competencies and Performance Outcomes have been approved by the OMB COR Functional Advisory Board, as of December 2012. CORs are reminded that their duties, responsibilities, and limitations are stated in the COR appointment memorandum issued by the Contracting Officer.

LEVEL I - Performance Outcomes for COR Competencies	
Competency 1. Acquisition Planning	
Performance Skills	Outcome
Documenting the Source- Assist in determining whether a written source selection plan is necessary, and if so, properly documenting the source selection planning or acquisition strategy.	Ability to participate on an acquisition strategy or source selection panel under close monitoring, if requested.
Methods of Payment- Assist in the selection of the most appropriate method of payment that will best minimize the Government's overhead.	Understand the various methods and procedures to pay an invoice.
Recurring Requirements- Assist in determining whether and how to provide for recurring requirements	Ability to support the CO in crafting contract language or defining the appropriate FAR clauses for satisfying recurring requirements.
Contract Type - Assist in determining appropriate contract type(s).	Understand the different types of contracts.
Task and Delivery Order Contracting- Suggest possible ordering vehicles to the CO in order to assist in determining the appropriate vehicles and submitting work package to request work under the contract.	Understand the types of contract vehicles available to agency and how they are used to meet agency requirements.
Competency 2. Market Research (Understanding the Marketplace)	
Performance Skills	Outcome
Conduct, collect, and apply market based research to understand the market place/requirement to identify the sources for a supply or service, the terms and conditions under which those goods/services are sold to the general public, and assist the CO on the best way to meet the need.	Ability to provide market research information/data to the CO.
Gather all information related to the potential sources of an acquisition as well as, for commercial items, the terms and conditions under which the sources sell the goods and/or services involved.	Ability to provide gathered information to the CO.
Industry Trends- Understand the industry environment and determine availability of sources of supply and/or services.	Understands basic industry trends and is able to research and find available sources of supply and/or services.
Warranties- Support the Contracting officer in determining whether a warranty is appropriate for a specific acquisition including nature and use of the supplies or services; the cost of applying a warranty and any issues with administration and enforcement.	Ability to provide CO with warranty information advantageous to the acquisition
Conflict of Interest - Identifying potential conflicts of interest.	Understand and identify conflicts of interest.

Technology - Understanding available sources of information (e.g., internet, spreadsheets) to efficiently conduct sufficient market research.	Knowledge of technology to develop market research.
Competency 3. Defining Government Requirements	
Performance Skills	Outcome
Writing Statements of Work - Create statement of work (SOW), statement of objectives (SOO) and other related documents.	Ability to assist in preparing clear requirements documents that facilitate maximum competition, in order to acquire quality goods and/or services at reasonable prices.
Conducting Needs Analysis and Preparing Requirements Documents - Perform an analysis, based on standard methodology, to identify all requirements and obligations in order to assist in the development of requirements documents.	Knowledge of commonly used methodologies to conduct needs analysis and ability to use information gathered to prepare requirements documents.
Assisting in the Development of Acquisition Strategy- Assist the CO with the development of an appropriate acquisition strategy.	Ability to provide input to the collection and analysis of market research and other acquisition planning efforts.
Pricing Information from offerors- If requested by the CO, assist in determining what pricing information to require from offerors.	Knowledge of what is required by the FAR and agency FAR supplement (as applicable), with regard to pricing information for the specific type of contract.
Competency 4. Effective Pre Award Communication	
Performance Skills	Outcome
Pre-Quote/Pre-Bid/Pre-Proposal Conferences- Assist with the pre-quote, pre-bid, or pre-proposal conference when appropriate and maintain an accurate record of the meeting.	Knowledge of the procedures for holding Pre-Quote/Pre-Bid/Pre-Proposal Conferences.
Amending/Canceling Solicitations- Provide input to CO into the amendment or cancelation of a solicitation when it is in the best interest of the Government and/or Agency.	Knowledge of the processes to amend/cancel solicitation.
Competency 5. Proposal Evaluation	
Performance Skills	Outcome
Evaluating Non-Price Factors- Apply non-price factors in evaluating quotations, proposals, and past performance.	Basic knowledge of evaluation and application of Non-Price Factors.
Evaluation Documentation- Ability to clearly document reasoning behind proposed evaluation.	Ability to provide clear written inputs to the technical evaluation report.
Maintain Ethical Standards and Procurement Integrity	Knowledge of and adherence to ethical requirements applicable to Federal procurement.
Competency 6. Contract Negotiation	
Performance Skills	Outcome
Determining Capability- Assist in determining and documenting the capability of a firm to effectively perform the terms and conditions of the contract.	Knowledge of Contractor Performance Assessment Reporting System (CPARS) and Past Performance Information Retrieval System (<i>PPIRS</i>) sufficient to gather and provide input for past performance evaluation.
Competency 7. Contract Administration Management	
Performance Skills	Outcome
Contract Administration Planning and Orientations- Define the COR roles and responsibilities by knowing the terms and conditions to which they are assigned;	Ability to perform COR roles and responsibilities within the framework of the COR appointment letter.

and participate in post-award orientation meetings to review contract milestones and responsibilities.	
Requests for Contract Modification and Adjustment- Provide appropriate documentation in support of contract modifications or adjustments to the CO.	Understand when it is appropriate to request a potential contract change and provide justification and documentation to the CO for consideration.
Work Order Management- Submit work package to request work under the contract.	Knowledge of technical requirements.
Financial Analysis and Reporting - Track the indexes as well as the appropriate burn rate for a given contract.	Knowledge of basic financial principles.
Competency 8. Effective Inspection & Acceptance	
Performance Skills	Outcome
Inspect and accept deliveries and services by inspecting deliverables and monitoring services for conformance with contract/ order/agreement terms and conditions, and accept or reject them.	Understands the process for coordination, inspection and acceptance of deliveries and services. Assist in accepting or rejecting deliveries and services.
Ensure compliance and completion by the Contractor of all required operations, including the preparation of any forms (ex. Material Inspection and Receiving Reports) or equivalent which shall be authenticated and certified by the COR that the services/supplies have been received and are acceptable.	Understands compliance and completion procedures by the Contractor of all required operations. Consults/Communicates with CO and/or Program leaders to assist in determining the compliance and completion by the Contractor.
Process inspection report as supporting documentation for payment and maintain documentation of all inspections performed including disposition of the results. Ensure that invoice properly aligns with delivered services and products received and accepted.	Consults/Communicates with CO and/or Program leaders regarding supporting documentation and invoices to ensure accuracy.
Competency 9. Contract Quality Assurance & Evaluation	
Performance Skills	Outcome
Ensures consistency of appropriate quality requirements as they relate to the contract and validates/verifies adherence to specified requirements through test and measurement activities.	Understand the contract requirements for delivery of products and services. Adherence to specified standards when accepting contract products and services.
Monitors the products or services throughout their life cycle.	Ability to communicate agency expectations for execution and delivery, to contractors and Government team, throughout the life cycle.
Influences knowledge management practices (e.g. continuous process-improvement).	Understand Agency knowledge management tools (e.g. continuous process improvement) and how they are implemented.
Competency 10. Contract Closeout	
Performance Skills	Outcome
Given a contract type, identify the FAR regulations, Agency supplemental requirements, as appropriate and steps associated with closeout. Distinguish between physical contract completion and administrative contract closeout.	Understand the FAR requirement associated with closing out a contract file in FAR 4.804 and Agency supplemental requirements, as appropriate.
Recommend the appropriate rating criteria for the Contractor's performance evaluation within the agency past performance system.	Review the COR responsibilities for Contractor's performance evaluation based on the COR Appointment Letter Understand COR responsibilities for the Contractor's performance evaluation.

Identify conditions for final payment to the Contractor.	Verify the final payment to the contractor based on the terms of the contract, completion of required deliverables, and inspection and acceptance.
Identify the appropriate program file completion requirements.	Maintain the appropriate documents in the program file based on the COR Appointment Letter.
Identify the conditions under which a COR's duties and responsibilities end for a specific contract.	Validate final acceptance of goods or services to assist the contracting officer to administrative close-out the contract.
Competency 11. Contract Reporting	
Performance Skills	Outcome
Develop the COR file in accordance with Agency requirements.	Understand the specific duties and responsibilities set forth in the COR delegation form and ensure the COR file is documented accordingly.
Identify corrective actions for a Contractor's poor performance.	Knowledge of FAR 42.15 policies regarding recording and maintaining contractor performance evaluations. Provide prompt input to the CO.
Accept or reject an invoice for a given task or deliverable.	Understand FAR 42.8 Disallowance of Costs and all specific agency procedures.
Identify key requirements of the Prompt Payment Act.	Understand FAR 32.9 Prompt Payment with special attention to determining payment due dates in 32.904.
Competency 12. Project Management	
Performance Skills	Outcome
Manage, identify, and assess problems and use sound judgment to identify corrective courses of action.	Anticipates and assess problems; Uses sound judgment to recommend corrective courses of action.
Manage effective business partnership with the Contracting Officers, senior-level agency advisors, other business advisers, and program participants.	Consults/communicates with CO and other program participants.
Risk Management -Identify, mitigate, and advise against potential risks.	Understand possible risks and mitigation strategies. Understand what the risk management process is for your agency and how it is applied to contracts. Provide updates to the PM and CO regarding specific risks to your project.
Monitors schedule and delivery processes.	Understand good project management principles and apply them as they relate to your contract schedule and performance.

APPENDIX F-2
OMB APPROVED KEY COMPETENCIES FOR CORs
(FAC-COR LEVEL II)

These essential competencies are required for Contracting Officer's Representatives (CORs) form the foundation for the knowledge, skills, and abilities to effectively perform as a COR. The FAC-COR Competencies and Performance Outcomes have been approved by the OMB COR Functional Advisory Board, as of December 2012. CORs are reminded that their duties, responsibilities, and limitations are stated in the COR appointment memorandum issued by the Contracting Officer.

LEVEL II - Performance Outcomes for COR Competencies	
Competency 1. Acquisition Planning	
Performance Skills	Outcome
Documenting the Source- Assist in determining whether a written source selection plan is necessary, and if so, properly documenting the source selection planning or acquisition strategy.	Ability to provide inputs to the Program Manager (PM) or Contracting Officer (CO) on the acquisition strategy and source selection plan.
Methods of Payment- Assist in the selection of the most appropriate method of payment that will best minimize the Government's overhead.	Understand the process to construct a detailed performance based payments (PBP) arrangement that will be documented by the CO in a special provision in the contract.
Contract Financing- Assist in determining whether to provide for Government financing, and, where necessary, the method of financing to use.	Ability to assist the CO in determining the appropriate contract financing terms and/or conditions for a given contract.
Recurring Requirements- Assist in determining whether and how to provide for recurring requirements	Ability to support the CO in crafting contract language or defining the appropriate FAR clauses for satisfying recurring requirements.
Contract Type - Assist in determining appropriate contract type(s).	Ability to support the CO in crafting contract language or defining the appropriate FAR clauses for satisfying recurring requirements.
Task and Delivery Order Contracting- Suggest possible ordering vehicles to the CO in order to assist in determining the appropriate vehicles and submitting work package to request work under the contract.	Ability to develop appropriate documentation in support of the COs determination of contract vehicle to be used to meet the requirement.
Strategic Planning- Advise customers on their acquisition-related roles and acquisition strategies needed to assure that supplies and services are available to meet mission requirements.	Understand the procurement integrity and support the PM and CO in training other Government personnel in the standards of ethical conduct.
Competency 2. Market Research (Understanding the Marketplace)	
Performance Skills	Outcome
Conduct, collect, and apply market based research to understand the market place/requirement to identify the sources for a supply or service, the terms and conditions under which those goods/services are sold to the general public, and assist the CO on the best way to meet the need.	Ability to provide market research information/data and analysis to the CO for decision.
Gather all information related to the potential sources of an acquisition as well as, for commercial items, the terms and conditions under which the sources sell the goods and/or services involved.	Ability to provide gathered information with analysis to the CO.

Industry Trends- Understand the industry environment and determine availability of sources of supply and/or services.	Knowledgeable of industry trends and ability to provide research and find available sources of supply and/or services.
Warranties- Support the Contracting officer in determining whether a warranty is appropriate for a specific acquisition including nature and use of the supplies or services; the cost of applying a warranty and any issues with administration and enforcement.	Ability to provide CO with warranty information to determine if a warranty is needed and document estimated cost.
Conflict of Interest - Identifying potential conflicts of interest.	Ability to identify a potential conflict of interest and how to mitigate the conflict.
Technology - Understanding available sources of information (e.g., internet, spreadsheets) to efficiently conduct sufficient market research.	Intermediate knowledge of technology to develop market research. (i.e. knowledge of using spread sheets, internet or databases).
Competency 3. Defining Government Requirements	
Performance Skills	Outcome
Writing Statements of Work - Create statement of work (SOW), statement of objectives (SOO) and other related documents.	Ability to prepare clear requirements documents that facilitate maximum competition.
Conducting Needs Analysis and Preparing Requirements Documents - Perform an analysis, based on standard methodology, to identify all requirements and obligations in order to assist in the development of requirements documents.	Ability to use the most suitable needs analysis methodology to identify the agency's needs and prepare clear requirements documents.
Assisting in the Development of Acquisition Strategy- Assist the CO with the development of an appropriate acquisition strategy.	Ability to collect and analyze market research and other acquisition planning efforts in order to provide input regarding the appropriate acquisition strategy.
Pricing Information from offerors- If requested by the CO, assist in determining what pricing information to require from offerors.	Understand what is required by the FAR and agency FAR supplement (as applicable), with regard to pricing information for the specific type of contract.
Competency 4. Effective Pre Award Communication	
Performance Skills	Outcome
Publicizing Proposed Acquisitions- Recommend to CO additional methods of publicizing the proposed procurement when appropriate.	Knowledge of where and when proposed acquisitions/solicitations must be published.
Subcontracting Requirements- Recommend appropriate requirements be put into solicitations for subcontracting or make-or-buy situations.	Knowledge of the acquisition requirements for subcontracting clauses for solicitations.
Solicitation Preparation- Assist in the preparation of a written solicitation, providing guidance as needed in the selection of the appropriate provisions and clauses for the requirement.	Knowledge of the requirements of all sections of the solicitation and technical requirements and ability to provide input.
Pre-Quote/Pre-Bid/Pre-Proposal Conferences- Assist with the pre-quote, pre-bid, or pre-proposal conference when appropriate and maintain an accurate record of the meeting.	Ability to provide technical input to the CO during Pre-Quote/Pre-Bid/Pre-Proposal Conference.
Amending/Canceling Solicitations- Provide input to CO into the amendment or cancelation of a solicitation when it is in the best interest of the Government and/or Agency.	Ability to provide input to CO to amend/cancel solicitation.
Competency 5. Proposal Evaluation	
Performance Skills	Outcome

Evaluating Non-Price Factors- Apply non-price factors in evaluating quotations, proposals, and past performance.	Ability to lead a team in evaluating and applying non-price factors to quotations, proposals, and past performance.
Evaluation Documentation- Ability to clearly document reasoning behind proposed evaluation.	Ability to document the results of the technical evaluation in a succinct manner.
Maintain Ethical Standards and Procurement Integrity	Ability to demonstrate, reinforce, and promote ethical behavior as a central element of the procurement environment.
Competency 6. Contract Negotiation	
Performance Skills	Outcome
Negotiation Strategy- Assist CO in preparing a negotiation strategy that will permit negotiators to maximize the Government's ability to obtain best value.	Knowledge of negotiation strategies and ability to conduct research on technical evaluation factors on complex procurements, if requested by the CO.
Conducting Discussions/Negotiations- Assist CO in preparing for a negotiation session.	Knowledge of the technical aspects of the requirements, including terms and conditions.
Determining Capability- Assist in determining and documenting the capability of a firm to effectively perform the terms and conditions of the contract.	Ability to input and provide past performance evaluation data from Contractor Performance Assessment Reporting System (CPARS) and Past Performance Information Retrieval. System (<i>PPIRS</i>), if requested by the CO.
Competency 7. Contract Administration Management	
Performance Skills	Outcome
Contract Administration Planning and Orientations- Define the COR roles and responsibilities by knowing the terms and conditions to which they are assigned; and participate in post-award orientation meetings to review contract milestones and responsibilities.	Ability to perform COR roles and responsibilities within the framework of the COR appointment letter.
Requests for Contract Modification and Adjustment- Provide appropriate documentation in support of contract modifications or adjustments to the CO.	Ability to analyze, document, justify and recommend proposed contract changes to the CO for consideration.
Work Order Management- Submit work package to request work under the contract.	Ability to prepare a technical requirements work package.
Financial Analysis and Reporting - Track the indexes as well as the appropriate burn rate for a given contract.	Ability to perform a financial analysis of the contract.
Competency 8. Effective Inspection & Acceptance	
Performance Skills	Outcome
Inspect and accept deliveries and services by inspecting deliverables and monitoring services for conformance with contract/ order/agreement terms and conditions, and accept or reject them.	Ability to inspect deliveries and monitor services to ensure conformance with contract/order/agreement terms and conditions. Accept or reject deliveries and services including acceptance of reports or analytical documentation.
Ensure compliance and completion by the Contractor of all required operations, including the preparation of any forms (ex. Material Inspection and Receiving Reports) or equivalent which shall be authenticated and certified by the COR that the services/supplies have been received and are acceptable.	Ensures compliance and completion of the Contractor operations, including the preparation of any forms (ex. Material Inspection and Receiving Reports) .
Process inspection report as supporting documentation for payment and maintain documentation of all inspections performed including disposition of the	Process and maintain inspection reports. Validate and process invoices in accordance with agency policies and procedures.

results. Ensure that invoice properly aligns with delivered services and products received and accepted.	
Competency 9. Contract Quality Assurance & Evaluation	
Performance Skills	Outcome
Ensures consistency of appropriate quality requirements as they relate to the contract and validates/verifies adherence to specified requirements through test and measurement activities.	Support the PM in developing and maintaining a quality assurance surveillance plan and/or performance standards, as appropriate. Verification of delivery of products and service, according to specified standards.
Monitors the products or services throughout their life cycle.	Implement processes and procedures for oversight of quality performance throughout the life cycle.
Influences knowledge management practices (e.g. continuous process-improvement).	Participate in knowledge management activities (e.g. communities of practice)
Competency 10. Contract Closeout	
Performance Skills	Outcome
Given a contract type, identify the FAR regulations, Agency supplemental requirements, as appropriate and steps associated with closeout. Distinguish between physical contract completion and administrative contract closeout.	Understand and become knowledgeable on the differences between physical contract closeout-FAR 4.804-4 and administrative contract close-out -FAR 4.804-5 and agency supplemental requirements, as appropriate.
Recommend the appropriate rating criteria for the Contractor's performance evaluation within the agency past performance system.	Prepare the contractor performance evaluation based on the COR appointment letter and contract complexity, contract type and FAR 42.15.
Identify conditions for final payment to the Contractor.	Verify the final payment to the contractor based on the terms and conditions of the contract, completion of required deliverables, and inspection and acceptance, see FAR part 4.8.
Identify the appropriate program file completion requirements.	Establish and maintain the appropriate documents in the program file based on the COR Appointment Letter, FAR 4.804-2, and FAR 4.804-3.
Identify the conditions under which a COR's duties and responsibilities end for a specific contract.	Provide documentation to the contracting officer in accordance with FAR 4.804-5 to de-obligate any excess funds and administratively close-out the contract.
Competency 11. Contract Reporting	
Performance Skills	Outcome
Develop the COR file in accordance with Agency requirements.	Know what duties, if any, have been delegated to a COR. Perform those duties assigned and maintain a clear and accurate record of Pre and Post award documents, actions and communications.
Identify corrective actions for a Contractor's poor performance.	Systematically monitor performance in accordance with the contract and Statement of Work terms and conditions. Provide feedback to the contractor and prompt input to the CO recommending a technical course of action.
Accept or reject an invoice for a given task or deliverable.	Review contractor invoices and recommend approval or disapproval promptly in accordance with FAR,
Identify key requirements of the Prompt Payment Act.	Implement contractor payments based upon knowledge of the time limits set forth in the applicable FAR 52.232 payment clauses.
Competency 12. Project Management	
Performance Skills	Outcome

Manage, identify, and assess problems and use sound judgment to identify corrective courses of action.	Anticipates and assess problems; Uses sound judgment to recommend corrective courses of action.
Manage effective business partnership with the Contracting Officers, senior-level agency advisors, other business advisers, and program participants.	Collaborates with CO, other business advisors and program participants; Makes recommendations
Manage and evaluate the long-term view to build a shared vision and acts as a catalyst for change.	Evaluates and facilitates the creation of a long term view, implements a shared vision, and serves as a catalyst for change
Manage the formulation of objectives and priorities, and implement plans consistent with the long-term interests of the organization in a global environment.	Identifies objectives and priorities and understands the long-term interests of the organization in a global environment
Manages stakeholder relationships that generate buy-in to the business and technical management approach to the program.	Identifies stakeholders; Understands stakeholder relationships; Recommends business and technical management approaches to the program for buy-in
Risk Management -Identify, mitigate, and advise against potential risks.	Identifies specific risks associated with an acquisition and plan/recommend ways to avoid/manage. Support the PM in the development of a risk management plan for your program.
Monitors schedule and delivery processes.	Apply good project management principles as they relate to your contract schedule and performance.

APPENDIX F-3
OMB APPROVED KEY COMPETENCIES FOR CORs
(FAC-COR LEVEL III)

These essential competencies are required for Contracting Officer's Representatives (CORs) form the foundation for the knowledge, skills, and abilities to effectively perform as a COR. The FAC-COR Competencies and Performance Outcomes have been approved by the OMB COR Functional Advisory Board, as of December 2012. CORs are reminded that their duties, responsibilities, and limitations are stated in the COR appointment memorandum issued by the Contracting Officer.

LEVEL III - Performance Outcomes for COR Competencies	
Competency 1. Acquisition Planning	
Performance Skills	Outcome
Documenting the Source- Assist in determining whether a written source selection plan is necessary, and if so, properly documenting the source selection planning or acquisition strategy.	Ability to lead an acquisition strategy or source selection panel and provide recommendations to the CO or PM.
Methods of Payment- Assist in the selection of the most appropriate method of payment that will best minimize the Government's overhead.	Ability to provide guidance to the CO/PM regarding best practices and appropriate
Contract Financing- Assist in determining whether to provide for Government financing, and, where necessary, the method of financing to use.	Ability to provide guidance to the CO or PM regarding best practices, appropriate uses of various types of contract financing, and the method of financing to use.
Unpriced Contracts- Assist in the preparation of unpriced orders and contracts.	Ability to provide guidance to the PM on how the CO can correctly use unpriced contractual documents where it is impractical to establish an acceptable pricing arrangement.
Recurring Requirements- Assist in determining whether and how to provide for recurring requirements	Ability to advise the PM and CO on the optimum terms and conditions for recurring requirements when such provisions would lower the expected cost.
Contract Type - Assist in determining appropriate contract type(s).	Ability to recommend the types of contracts and provide inputs to the CO.
Compliance to FAR Guidelines- Assist the CO with compliance of applicable FAR guidelines when acquiring products and services.	Be familiar with appropriate sections of the FAR and provide insights to the CO on technical requirements and issues.
Determining Need for EVM- Mitigate potential problems with cost, schedule, and technical risks.	Understand the requirements of EVM. Provide guidance to the CO to ensure that the level of cost, schedule and performance reporting is appropriate for requirements and risks.
Task and Delivery Order Contracting- Suggest possible ordering vehicles to the CO in order to assist in determining the appropriate vehicles and submitting work package to request work under the contract.	Ability to lead the configuration control board or other agency specific forum for determining what tasks are approved for contractual action.
Strategic Planning- Advise customers on their acquisition-related roles and acquisition strategies needed to assure that supplies and services are available to meet mission requirements.	Ability to advise customers on their acquisition-related roles and acquisition strategies needed to assure that supplies and services are available to meet mission requirements.

Competency 2. Market Research (Understanding the Marketplace)	
Performance Skills	Outcome
Conduct, collect, and apply market based research to understand the market place/requirement to identify the sources for a supply or service, the terms and conditions under which those goods/services are sold to the general public, and assist the CO on the best way to meet the need.	Ability to provide market research information/data/analysis and recommendations to the CO.
Gather all information related to the potential sources of an acquisition as well as, for commercial items, the terms and conditions under which the sources sell the goods and/or services involved.	Ability to provide gathered information with analysis and recommendations to the CO.
Industry Trends- Understand the industry environment and determine availability of sources of supply and/or services.	Ability to analyze and document research of industry trends and available sources (quality and price).
Warranties- Support the Contracting officer in determining whether a warranty is appropriate for a specific acquisition including nature and use of the supplies or services; the cost of applying a warranty and any issues with administration and enforcement.	Ability to recommend detail warranty requirements if applicable and provide detailed estimates.
Conflict of Interest - Identifying potential conflicts of interest.	Ability to identify a potential conflict of interest and how to mitigate the conflict.
Technology - Understanding available sources of information (e.g., internet, spreadsheets) to efficiently conduct sufficient market research.	Ability to provide comparative analysis using documented sources, calculations and tools that support recommendations.
Competency 3. Defining Government Requirements	
Performance Skills	Outcome
Writing Statements of Work - Create statement of work (SOW), statement of objectives (SOO) and other related documents.	Ability to prepare clear requirements documents for the most complex contracting vehicles, facilitating maximum competition.
Conducting Needs Analysis and Preparing Requirements Documents - Perform an analysis, based on standard methodology, to identify all requirements and obligations in order to assist in the development of requirements documents.	Ability to use the most suitable needs analysis methodology to identify the agency's needs, prepare clear requirements documents, and determine performance metrics.
Assisting in the Development of Acquisition Strategy- Assist the CO with the development of an appropriate acquisition strategy.	Ability to collect and analyze market research and other acquisition planning efforts for the most complex acquisitions in order to provide input regarding the appropriate acquisition strategy.
Pricing Information from offerors- If requested by the CO, assist in determining what pricing information to require from offerors.	Comprehend what is required by the FAR and agency FAR supplement (as applicable), with regard to pricing information for the specific type of contract.
Competency 4. Effective Pre Award Communication	
Performance Skills	Outcome
Publicizing Proposed Acquisitions- Recommend to CO additional methods of publicizing the proposed procurement when appropriate.	Ability to make recommendations of other methods that are acceptable to publish proposed acquisitions/solicitations.
Subcontracting Requirements- Recommend appropriate requirements be put into solicitations for subcontracting or make-or-buy situations.	Ability to review and provide inputs to the CO regarding the use of subcontracts.
Solicitation Preparation- Assist in the preparation of a written solicitation, providing guidance as needed in the selection of the appropriate provisions and clauses for the requirement.	Ability to provide input to the technical aspects of the solicitation.

Pre-Quote/Pre-Bid/Pre-Proposal Conferences- Assist with the pre-quote, pre-bid, or pre-proposal conference when appropriate and maintain an accurate record of the meeting.	Ability to provide complex technical input to the CO during Pre-Quote/Pre-Bid/Pre- Proposal Conferences.
Amending/Canceling Solicitations- Provide input to CO into the amendment or cancelation of a solicitation when it is in the best interest of the Government and/or Agency.	Ability to accept and maintain all copies of amendments/cancellations of solicitation for the COR's file.
Competency 5. Proposal Evaluation	
Performance Skills	Outcome
Evaluating Non-Price Factors- Apply non-price factors in evaluating quotations, proposals, and past performance.	Ability to lead a team in evaluating and applying non-price factors to complex quotations, proposals, and past performance.
Evaluation Documentation- Ability to clearly document reasoning behind proposed evaluation.	Ability to document the results of a technical evaluation for a complex procurement in a succinct manner.
Maintain Ethical Standards and Procurement Integrity	Ability to demonstrate, reinforce, and promote ethical behavior as a central element of the procurement environment.
Competency 6. Contract Negotiation	
Performance Skills	Outcome
Negotiation Strategy- Assist CO in preparing a negotiation strategy that will permit negotiators to maximize the Government's ability to obtain best value.	Knowledge of negotiation strategies and ability to conduct research on technical evaluation factors on complex procurements, if requested by the CO.
Conducting Discussions/Negotiations- Assist CO in preparing for a negotiation session.	Knowledge of the technical aspects of the most complex requirements, including terms and conditions.
Determining Capability- Assist in determining and documenting the capability of a firm to effectively perform the terms and conditions of the contract.	Ability to input, retrieve, and analyze past performance evaluation data from Contractor Performance Assessment Reporting System (CPARS) and Past Performance Information Retrieval System (PPIRS), provide a recommendation to the CO of the firm's capability to perform the terms of the contract.
Competency 7. Contract Administration Management	
Performance Skills	Outcome
Contract Administration Planning and Orientations- Define the COR roles and responsibilities by knowing the terms and conditions to which they are assigned; and participate in post-award orientation meetings to review contract milestones and responsibilities.	Ability to perform COR roles and responsibilities within the framework of the COR appointment letter.
Requests for Contract Modification and Adjustment- Provide appropriate documentation in support of contract modifications or adjustments to the CO.	Ability to analyze, document, justify and recommend proposed contract changes to the CO for consideration.
Work Order Management- Submit work package to request work under the contract.	Ability to prepare a comprehensive technical requirements work package.
Financial Analysis and Reporting - Track the indexes as well as the appropriate burn rate for a given contract.	Ability to analyze and provide a comprehensive financial report on complex contracts.
Competency 8. Effective Inspection & Acceptance	
Performance Skills	Outcome
Inspect and accept deliveries and services by inspecting deliverables and monitoring services for conformance with contract/ order/agreement terms and conditions, and accept or reject them.	Ability to inspect deliveries and monitor services to ensure conformance with complex contract/order/agreement terms and conditions.

	Accept or reject deliveries and services including acceptance of reports or analytical documentation.
Ensure compliance and completion by the Contractor of all required operations, including the preparation of any forms (ex. Material Inspection and Receiving Reports) or equivalent which shall be authenticated and certified by the COR that the services/supplies have been received and are acceptable.	Oversees compliance and completion of the Contractor operations; Advises Contractor and collaborates with CO/Program leaders to ensure all services/supplies received are acceptable.
Process inspection report as supporting documentation for payment and maintain documentation of all inspections performed including disposition of the results. Ensure that invoice properly aligns with delivered services and products received and accepted.	Manage the process for completion of inspection reports. Validate and process invoices in accordance with agency policies and procedures.
Competency 9. Contract Quality Assurance & Evaluation	
Performance Skills	Outcome
Ensures consistency of appropriate quality requirements as they relate to the contract and validates/verifies adherence to specified requirements through test and measurement activities.	Support the PM in developing and maintaining quality assurance, performance standards and/or test and evaluation plans, as appropriate. Verification of delivery of products and service, according to specified standards.
Monitors the products or services throughout their life cycle.	Develop and manage quality control and assurance processes and procedures for oversight throughout the life cycle.
Influences knowledge management practices (e.g. continuous process-improvement).	Mentor and promote the use of knowledge management throughout the acquisition community.
Competency 10. Contract Closeout	
Performance Skills	Outcome
Given a contract type, identify the FAR regulations, Agency supplemental requirements, as appropriate and steps associated with closeout. Distinguish between physical contract completion and administrative contract closeout.	According to Appointment Letter and FAR 4.804.5, identify the steps to close out a contract based on the assigned contract type and agency supplemental requirements, as appropriate.
Recommend the appropriate rating criteria for the Contractor's performance evaluation within the agency past performance system.	Prepare the contractor performance evaluation based on the COR appointment letter, contract complexity,
Identify conditions for final payment to the Contractor.	Verify the final payment to the contractor based on the terms and conditions of the contract, completion of required deliverables, and inspection and acceptance, see FAR part 4.8.
Identify the appropriate program file completion requirements.	Establish and maintain the appropriate documents in the program file based on the COR Appointment Letter, FAR 4.804-2, and FAR 4.804-3.
Identify the conditions under which a COR's duties and responsibilities end for a specific contract.	Provide documentation to the contracting officer in accordance with FAR 4.804-5 to de-obligate any excess funds and administratively close-out the contract.
Competency 11. Contract Reporting	
Performance Skills	Outcome
Develop the COR file in accordance with Agency requirements.	Ensure all necessary documentation is in the file and coordinated among task/delivery order CORs, alternate CORs, and Program Managers as necessary. Provide copies to CO as deemed appropriate.

Identify corrective actions for a Contractor's poor performance.	Oversee the implementation of the corrective action plan and maintain communication with the CO.
Accept or reject an invoice for a given task or deliverable.	Engage in sophisticated acceptance testing or mandatory inspection with Quality Assurance personnel and promptly communicates to CO disposition of invoice in accordance with agency procedures and contract terms and conditions.
Identify key requirements of the Prompt Payment Act.	Provide documentation to CO necessary to justify extension of acceptance periods to permit proper Government inspection and testing of the supplies delivered or services performed.
Competency 12. Project Management	
Performance Skills	Outcome
Manage, identify, and assess problems and use sound judgment to identify corrective courses of action.	Manages and implements corrective courses of action for anticipated/assessed problems
Manage effective business partnership with the Contracting Officers, senior-level agency advisors, other business advisers, and program participants.	Collaborates, advises and manages business partnerships with the CO, senior-level agency advisors, other business advisers, and program participants; Facilitates and leads meetings with all
Manage and evaluate the long-term view to build a shared vision and acts as a catalyst for change.	Evaluates and facilitates the creation of a long term view, implements a shared vision, and serves as a catalyst for change
Manage the formulation of objectives and priorities, and implement plans consistent with the long-term interests of the organization in a global environment.	Implements objectives and priorities in accordance with the long-term interests of the organization in a global environment
Manages stakeholder relationships that generate buy-in to the business and technical management approach to the program.	Maintains stakeholder relationships and communicates business and technical management approaches to the program; Leads stakeholder meetings and facilitates buy-in
Risk Management -Identify, mitigate, and advise against potential risks.	Addresses risks and implements/leads risk management strategies., Develop/update processes and procedures for mitigation of strategic risks for your agency, with regard to contract and project management.
Monitors schedule and delivery processes.	Develop processes and procedures for how your agency will apply good project management principles as they relate to your contract schedule and performance.

APPENDIX G

FAC-COR TRAINING DEFERMENT CERTIFICATION REQUEST FORM

PART A – APPLICANT IDENTIFICATION

All information below is required to be completed.

Name (Last, First, Middle Initial): _____

Title, Series, Grade: _____

E-mail Address: _____ Phone: _____ Fax: _____

Organization Name: _____

Organization Address: _____

Supervisor's Name: _____

What type(s) of contract(s) and dollar value are you being nominated?

☐ Information Technology

☐ Superfund

☐ Services

☐ Other (Please Specify): _____

☐ I am applying for FAC-COR Level I Training Deferment

☐ I am applying for FAC-COR Level II Training Deferment

☐ I am applying for FAC-COR Level III Training Deferment

Training (Completed and Anticipated Completion):

Course Number and Title: _____ **Completion Date/Anticipated Date:** _____

Planned Certification Request Date: _____

PART B – DEFERMENT REQUEST TYPE

Indicate the type of deferment requested by checking the appropriate blocks:

1. ☐ Up to 3 months – enter deferment period requested: _____
☐ Level I ☐ Level II ☐ Level III

2. ☐ Up to 6 months – enter deferment period requested: _____
☐ Level I ☐ Level II ☐ Level III

PART C – RATIONALE FOR NOT ACHIEVING CERTIFICATION

Explain fully why you do not meet the COR certification requirements or why you cannot submit the required application for certification. Please detail what actions you have taken to achieve certification before requesting a deferment of certification. Attach supporting documentation.

PART D – EXPERIENCE CERTIFICATION REQUIREMENT

Provide details of your COR and/or related acquisition experience to support the deferment requested. Please indicate job titles, duties and responsibilities, and dates of performance. Indicate the date that you expect to fully achieve the requirements for certification at the requested level. Attach supporting documentation.

PART E – SIGNATURES

1. Applicant's certification:

I certify that the information provided is accurate and current to support this deferment request.

Applicant's signature: _____ Date: _____

2. Immediate supervisor's concurrence/non-concurrence:

I have reviewed and discussed with [applicant's name] the deferment request and the information provided in support thereof. Based on the information provided, I

☐ Concur with the deferment request ☐ Do not concur with the deferment request

☐ Rationale for non-concurrence, if applicable:

Printed name: _____

Signature: _____ Date: _____

3. Contracting Officer concurrence/non-concurrence:

I have reviewed the deferment request and the information provided in support thereof. Based on the information provided, I

☐ Concur with the deferment request ☐ Do not concur with the deferment request

☐ Rationale for non-concurrence (attach supporting document statement)

Printed name: _____

Signature: _____ Date: _____

4. Acquisition Career Manager Review & Tracking:

I have reviewed the deferment request and the information provided in support thereof. Based on the information provided, I

☐ Concur with the deferment request ☐ Do not concur with the deferment request

☐ Rationale for non-concurrence; if concurrence is granted, provide required completion date for all training (attach supporting statement).

Printed name: _____

Signature: _____ Date: _____

5. Senior Procurement Executive (SPE) concurrence/non-concurrence:

☐ I approve the deferment request ☐ I do not approve the deferment request

☐ Rationale for disapproval, if applicable:

Printed name of SPE: _____

Signature: _____ Date: _____

APPENDIX H

[Insert COR's Name, FAC-COR Level], [Insert the type of COR and contract number from 1900-65b on each page]

CONTRACTING OFFICER'S REPRESENTATIVE (COR) APPOINTMENT MEMORANDUM
Tailor to each contract and appointment

Date: [Print date here]

To: [Print name of COR here]

From: [Print name of CO here]

Subject: **CONTRACTING OFFICER'S REPRESENTATIVE (COR) APPOINTMENT**
 [Specify FAC-COR level], [Specify type of COR as designated on the 1900-65b] for
 [insert contract number and if applicable: the Delivery order #, Task Order # #,
 Purchase order #, GSA Schedule # etc.).

You are hereby delegated authority to act as a [specify FAC-COR level], [Insert COR type from 1900-65] Contracting Officer's Representative (COR) for [specify Contract # _____] (and if applicable: the Delivery order #, Task Order #, Purchase order #, GSA Schedule # etc) entitled " _____ "]. As such your duties are to assist the Contracting Officer (CO) in the monitoring and oversight of the technical and programmatic aspect of this contract through performance and closeout. This delegation may not be changed unless written authorization is given by the Contracting officer. As a COR you may be personally liable for unauthorized acts or commitments. "Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. As the COR, you must represent the CO within the scope of the following authority, responsibilities, and limitations:

AUTHORITY:

As COR, you have the authority to:

- ☐ 1. Perform surveillance of the contract work and conduct inspections that are necessary to assure compliance with the contract terms and conditions. Resolve day-to-day matters within the scope of your authority.
- ☐ 2. Perform inspection(s) necessary for the acceptance of deliverables (including contract line items numbers (CLINs) and as stated in the contract and to require the contractor to correct any deficiencies.
- ☐ 3. Assist the contractor in interpreting the contract specifications or technical requirements provided that any interpretation or clarification that he COR provides is within the limitations prescribed late in this delegation
- ☐ 4. Certify invoices for payment.

RESPONSIBILITIES:

As COR, you have the following responsibilities as checked:

- ☐ 1. Be familiar with and understand contract requirements (SOW, specification, CLINs and work-break-down structure) and implications of contractor performance in relation to the contract requirements.

- ☐ 2. Assist the CO in developing a contract management plan, finalizing it with the contractor and executing it.
- ☐ 3. Establish a technical performance review program for evaluation of the contractor's work in accordance with the contract terms, conditions, and specifications.
- ☐ 4. Be familiar with appropriate sections of the FAR, EPAAR and other Agency guidelines and provide insights to the CO on technical requirements and issues.
- ☐ 5. Maintain a complete working file of all correspondence (or data), including but not limited to invoices initiated or received by you in connection with subject contract.
- ☐ 6. Serve as a member of the negotiation team (as a consultant to the CO) during negotiations by reviewing and evaluating the technical aspects of Contractor proposals and furnishing evaluation comments and recommendations to the CO.
- ☐ 7. Monitor the contractor's performance of the technical requirements of the contract and notify the CO in writing of any indication that the terms of the contract are not being met.
- ☐ 8. Inspect contract deliverables for conformance to the contract specifications and accept or reject them.
- ☐ 9. Maintain direct communications with the contractor and the CO. Serve as the liaison through which the contractor can relay questions and problems of a technical nature to the CO. Meet with the contractor or its designated representative on a periodic basis to keep the lines of communication open.
- ☐ 10. Draft technical portions of CO letters to the contractor as requested by the CO.
- ☐ 11. Advise the CO on contractual matters of a technical nature.
- ☐ 12. Recommend needed change order to the CO when in the best interest of the government including Engineering Change Proposals (ECPs) and Value Engineering Change Proposals (VECPs).
- ☐ 13. Inform the CO as to the status and progress of performance under the contract and alert the CO to any potential or existing problems.
- ☐ 14. Monitor the contractor's use of key personnel and notify the CO of any changes in key personnel proposed by the contractor.
- ☐ 15. Review the qualifications of proposed subcontractors and the appropriateness of subcontracting work and make recommendations to the CO regarding consent to the placement of subcontractors.
- ☐ 16. Practice claims avoidance, halting unspecified accelerated production and/or directions of other government employees.
- ☐ 17. Perform timely approval of invoices to ensure Prompt Payment of those invoices
- ☐ 18. Evaluate all payment requests (e.g. advance , progress, etc...) based on costs/price incurred and actual work accomplished during invoice certification

- 19. Promptly notify the CO when absence, (e.g. on leave, emergency, etc...) and Alternate COR is not available to ensure prompt payment of invoices
- 20. Input, retrieve and analyze past performance evaluation report into the Contractor Performance Assessment Reporting System (CPARS) or as otherwise requested by the CO.
- 21. Review all contractor-furnished reports, including monthly progress reports and earned value management reports when appropriate.
- 22. Submit reports, such as the Quality Assurance Surveillance Report, the CO requires to perform their duties.
- 23. Ensure that EIT products or services, produced, or delivered by contractors or consultants meet applicable Section 508 accessibility standards or notify the CO when they are not in compliance before acceptance.
- 24. Ensure appropriate confidentiality of contractor submissions bearing proprietary markings.
- 25. Coordinate with the CO to ensure support contractors have signed nondisclosure forms.
- 26. Ensure administration of government-furnished property
- 27. Furnish the CO requests for waivers (whether generated by government or contractor personnel) along with supporting paperwork.
- 28. Monitor the contractor's compliance with safety and security requirements.
- 29. Conduct business with industry, in accordance with EPA Oder 1900.1A Interacting with Contractors and the EPA Vendor Communication Plan.
- 30. Maintain a professional relationship with the contractor at all times.
- 31. Ensure contractor completion of yearly security awareness training.
- 32. Provide the CO a copy of all technical correspondence with the contractor.
- 33. For TO/DO CORs, maintain copies of all deliverables received under the tasking document. This file is considered a segment of the official contract file and should be forwarded to the CO/CS at the final closeout of the contract.
- 34. Obtain and maintain a listing of employees who will be working at the site. The list is to be kept current by assuring that employees are added and deleted from the list as appropriate. This is important to the security of the facility and your list may be used as a basis for background checks by the security office in the relevant location. A copy of this list must be provided to the security office at least quarterly, and at any time a contractor employee is added or deleted from the list.
- 35. Complete mandatory training required for the appointed COR level. FAC-COR certifications are valid for two years from the date of FAITAS certification.
- 36. Seek guidance from the CO for specific situations not covered in this

- ☐ 37. Report any observed fraud, waste or inefficiencies to the CO.
- ☐ 38. Report through normal administrative channels to Agency Inspector General (IG) and to the CO, any evidence of prime or subcontractor kickback, attempt to bribe, or other fraudulent behavior.

LIMITATIONS:

As COR, you may not:

- ☐ 1. Make or give the appearance of being able to make contractual commitments outside the scope of the contract or execute or agree to modifications or take actions that would commit the Government to a change in contract price, quality, quantity, or delivery schedule.
- ☐ 2. Sign any changes or modifications to contracts and/or task order /delivery order(s).
- ☐ 3. Make determinations regarding issues of Contractor liability that may arise during contract performance. Such issues should be referred to the Contracting Officer.
- ☐ 4. Authorize the purchase or lease of Government-Furnished property.
- ☐ 5. Conduct negotiations or bind the Government by making any written or oral agreements with the contractor.
- ☐ 6. Directly or indirectly change the following:
 - i. Pricing , cost or fee;
 - ii. Scope of the contract ore TO/DO
 - iii. Delivery schedule or period of performance;
 - iv. Labor mix or level of effort; or any other terms/conditions of the contract or TO/DO
- ☐ 7. Take part in a labor controversy or dispute involving the Contractor or its employees.
- ☐ 8. Direct the Contractor on how to perform the work.
- ☐ 9. Issue stop-work orders.
- ☐ 10. Supervise Contractor employees implicitly or explicitly which could constitute personal services.
- ☐ 11. Engage in conduct prejudicial to the Government.
- ☐ 12. Use public office for gain.
- ☐ 13. Impede Government efficiency or economy.
- ☐ 14. Lose independence or impartiality.
- ☐ 15. Make a Government decision outside official channels.
- ☐ 16. Affect adversely the public's confidence in the Government.

Note: The CO may add other duties not covered above here.

ACKNOWLEDGMENT STATEMENT

Please acknowledge receipt and acceptance of this appointment by signing and returning the attached sheet to the CO. Your appointment as the COR under the above numbered contract is terminated upon receipt of a written notice of termination from the appointing CO, the CO's successor, or a higher level of authority, or upon completion of the contract.

The duties and responsibilities set forth herein are not intended to be all-inclusive. As COR, you are required to consult with the CO when there are questions related to your authority. You are not authorized to redelegate your authority. If you have any questions concerning your role as COR, please contact the CO at [insert phone #/ email address].

I understand and accept my appointment as a [specify FAC-COR level], [Insert COR type from 1900-65b] Contracting Officer's Representative (COR) for [specify Contract # _____ (and if applicable: the Delivery order #, Task Order ##, Purchase order #, GSA Schedule # etc) entitled " _____ "], as outlined in your letter to me dated [insert date of COR memorandum].

Signature of COR

Signature of COR Supervisor

Print Name of COR

Print Name of COR Supervisor

Date

Date

Signature of Appointing CO

Date

APPENDIX I

Contracting Officer's Representative Rescission of Appointment (Use Official Letterhead)

(Insert Date)

(Insert Office Symbol)

MEMORANDUM FOR CONTRACTING OFFICER'S REPRESENTATIVE, Attn: (insert name, organization/AAship, and full mailing address of COR)

Subject: REQUEST FOR RECISSION OF CONTRACTING OFFICER'S
REPRESENTATIVE (COR) APPOINTMENT

1. Due to (or insert other reason), appointment as COR is [rescinded or to be rescinded] effective (insert date) for the following contracts:

CONTRACT NUMBER _____	CONTRACTOR _____
-----------------------	------------------

2. The nominated successor will be (insert name), at extension (insert number). Enclosed is a copy of COR's nomination form signed by his/her Supervisor and a copy of the associated attachments to support the nominee's qualifications.

3. The point of contact for this request is (insert name), at extension (insert number).

NAME

Contracting Officer

Enclosure Copy to:

COR

COR's Supervisor

OAS Director, if applicable

Subsection 1.6.6 - Program and Project Managers' Federal Acquisition Certification Program (November 2018)

This subsection supersedes Interim Policy Notice (IPN) 09-02-Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) (March 20, 2009).

1.6.6.1 Purpose.

This policy establishes Environmental Protection Agency (EPA) processes and procedures for obtaining Federal Acquisition Certification (FAC) for Program and Project Managers (P/PM). The FAC-P/PM and this policy establish training, experience, and continuous learning requirements for certification of all P/PMs at EPA, including an additional information technology (IT) core-plus specialization certification for those P/PMs responsible for Agency IT requirements. These certifications are necessary to ensure EPA P/PMs have all core competencies needed to successfully manage programs and projects and to improve outcomes.

1.6.6.2 Background.

The Services Acquisition Reform Act of 2003, P.L. 108-136, expanded the definition of acquisition to include functions performed by P/PMs, such as requirements and business case development, technical direction, and life-cycle management. In April 2007, the Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP) issued the first FAC-P/PM. In October 2009, OFPP issued the Acquisition Workforce Development Strategic Plan, which established a multi-agency Functional Advisory Board (FAB) to improve the FAC-P/PM program and make ongoing recommendations to more effectively manage the P/PM workforce. This FAC-P/PM revision, which refreshes the original program, is part of the continuous improvement of the P/PM function.

1.6.6.3 Authority/Applicability.

(a) *Authority.* The FAC-P/PM is issued pursuant to Public Law 113-291, FY 2015 National Defense Authorization Act, Subtitle D, Federal Information Technology Acquisition Reform Act; the OFPP Act, 41 U.S.C § 1101 et. seq., and OFPP Policy Letter 05-01, "Developing and Managing the Acquisition Workforce," (April 15, 2005), which established a requirement for federal acquisition certification programs. Additional guidance for training and certification standards set forth in this section are established in accordance with the requirements of the following OFPP Memorandums: "Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce," dated September 3, 2013; and "Revisions to the Federal Acquisition Certification for Program and Project Managers (FAC-P/PM)," dated December 16, 2013.

(b) *Governance.*

(1) The EPA Senior Procurement Executive (SPE) is responsible for management direction on acquisitions, procurement systems, and the acquisition workforce, including the implementation of acquisition policies, regulations, and standards. Additionally, the SPE is responsible for identifying the members of the Agency's acquisition workforce, defining training needs, and developing and maintaining an acquisition career management program to ensure the development of a competent, professional workforce to support the accomplishment of the Agency's mission.

(2) The Acquisition Career Manager (ACM) - also known as the Agency Certification Manager (ACM), is a Federal employee of OAS who is formally appointed in writing by the SPE. The ACM is responsible for strategic acquisition human capital management and management of the Agency's acquisition workforce training, career development, and certification programs in accordance with the requirements of the Services Acquisition Reform Act of 2003 (SARA) (P.L. 108-136); OFPP Policy Letter 05-01, *Developing and Managing the Acquisition Workforce* (April 15, 2005); section 4307(a) of the Clinger-Cohen Act (40 U.S.C. §1401(3)); and amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433). As the Agency Certification Manager, the ACM approves/disapproves all P/PM certification requests.

(c) *Applicability.* This policy is applicable to individuals assigned with duties and responsibilities within Federal IT program and project management (policy and planning, enterprise architecture, application software, security, systems analysis, operating systems, networks services, data management, internet management, system administration, and customer service). This policy may include various Office of Personnel Management (OPM) General Schedule occupations assigned with IT roles and responsibilities for the following:

(1) *EPA's Capital Planning and Investment Control (CPIC) Program* - is a structured, integrated approach to managing the Agency's IT investments. Individuals assigned to this program ensure that all IT investments align with the EPA mission and support business needs while minimizing risks and maximizing returns throughout the investment's lifecycle. CPIC relies on a systematic approach to IT investment management in three distinct phases: select, control, and on-going evaluation, to ensure each investment's objectives support the business and mission needs of the Agency.

(2) *Program Manager* - the managers with the responsibility and relevant discretionary authority, who is uniquely empowered to make final scope-of-work, IT capital-investment, and performance acceptability decisions on assigned IT projects and programs. The program manager is also responsible for meeting program objectives or production requirements through the acquisition of any mix of in-house, contract, or reimbursable support resources. Program managers are responsible to stakeholders for management and oversight of subordinate projects within the scope of the overall program, as well as Integrated Project Teams (IPTs) and program policy and planning. The program manager is ultimately responsible for effectively managing all business and technical risks of the program to ensure effective systems and services are delivered to the end user on schedule, within budget and at the required levels of performance.

(3) *Project Manager* – managers with assigned responsibility for accomplishing a specifically designated work effort or group of closely related efforts established to achieve stated or designated objectives, defined tasks, or other units of related effort on a schedule, within cost constraints and in support of the program mission or objective. The project manager is responsible for the planning, controlling, and reporting of the project, and for the management of required project related functions, including acquisition planning, definitization of requirements, business case development, performance of the schedule, and formulation, justification and execution of the budget. The project manager is responsible for effectively managing project risks to ensure effective IT systems and services are delivered through a total life-cycle approach to the end user on schedule, within budget and at the required levels of performance. A program manager may also serve as project manager for projects within the scope of the IT program.

(4) *Remedial Project Manager (RPM)* – This policy **is not applicable to the RPM**. RPMs are defined by Subsection 1.6.5 - Contracting Officer's Representatives Three-Tiered Program (March 2015) as "the EPA Official responsible for overseeing cleanup actions at a site." When appointed as a COR, a RPM must comply with all required certification training and recertification requirements as stated in Subsection 1.6.5. RPMs may perform duties as a Task Order COR or COR for a specific contract vehicle as delegated by the CO appointment letter.

1.6.6.4 Definitions [Reserved].

1.6.6.5 Policy.

As identified in Section 1.6.5.6 below, the FAC P/PM certification program includes entry level, mid-level and senior-level certifications. Additionally, the FAC P/PM framework includes an IT core-plus certification for personnel who manage specific investments requiring specialized knowledge, skills and abilities. Program and project managers assigned to IT programs considered major acquisitions (EPA Major Capital IT Investments) and non-major acquisitions (EPA Minor Capital IT Investments) as defined by the *Office of Management and Budget (OMB) Circular A-11 - Preparation, Submission, and Execution of The Budget*, must be certified at the appropriate FAC P/PM level as identified below:

(a) Major IT Investment.

(1) For P/PMs with primary responsibility for an EPA Major investment, or projects and activities under the purview of an EPA Major investment, the P/PM shall be certified at the FAC P/PM Senior Level and obtain an IT Core-Plus Specialization Senior Level certification.

(2) An EPA Major investment requires special management attention because of its importance to the mission or function of the agency; has significant program or policy implications; has high executive visibility; has high development, operating, or

maintenance costs; annual expenditure greater than \$5M; is funded through other than direct appropriations; or, is defined as major by the EPA's CPIC process.

(3) Major Investments must be reported in the EPA Exhibit 100, EPA Exhibit 200, OMB Exhibit 300, OMB Exhibit 53 and OMB Monthly IT Dashboard (ITDB).

(4) A Major IT Investment is an investment that meets at least one of the following criteria listed below:

- (i) One that is designated by the EPA Chief Information Officer (CIO) as critical to the EPA mission or to the administration of programs, finances, property or other resources;
- (ii) One that is implemented for financial management and obligates more than \$500K annually;
- (iii) One that requires special management attention because of its importance to the mission of EPA;
- (iv) One that has a significant program or policy implication, or congressional interest;
- (v) One that has high executive visibility;
- (vi) One that has high development, operating, or maintenance costs, deemed by EPA as:
 - Annual expenditure greater than \$5M and
 - Estimated life cycle costs equal to or greater than \$15M.

(b) Medium IT Investment.

(1) For P/PMs with primary responsibility for an EPA Medium investment, the P/PM shall be certified at the FAC P/PM Mid-Level and IT Core-Plus Specialization Mid-Level certification.

(2) An EPA Medium investment refers to any IT investment with annual expenditure equal to or greater than \$2M, but less than \$5M, supports Agency IT investments, EPA's vision, mission, and goals, and is implemented at acceptable costs within reasonable time frames.

(3) Medium Investments must be reported in the EPA Exhibit 100, EPA Exhibit 200 and OMB Exhibit 53.

(4) A Medium IT Investment is an investment that meets at least one of the criteria listed below:

- (i) Annual expenditure equal to or greater than \$2M, but less than \$5M;
- (ii) Estimated life cycle costs less than \$15M;
- (iii) Less than \$2M annual cost in any current or future life cycle year when 1) the investment is an enterprise wide investment or cross-cutting between

programs; or 2) the investment is High Risk as determined by the Program Office or the CIO.

(c) Lite IT Investment.

- (1) For PMs with primary responsibility for Lite IT investments, the PM shall be certified at the FAC P/PM Entry Level.
- (2) A Lite IT investment refers to any IT Investment in the EPA IT portfolio that does not meet the definition of Major, or Medium IT investment and has annual expenditure equal to or greater than \$250K, but less than \$2M.
- (3) Lite IT Investments must be reported in the EPA Exhibit 100 and OMB Exhibit 53.
- (4) A Lite IT Investment is an investment that meets the criteria listed below:
 - (i) Annual expenditure equal to or greater than \$250K, but less than \$2M; and
 - (ii) Estimated life cycle costs less than \$6M.

(d) Small and Other IT Investment.

- (1) For P/PMs with primary responsibility for Small and other IT investments, the P/PM shall be certified at the FAC P/PM Entry Level.
- (2) A Small and Other investment refers to any IT Investment in the EPA IT portfolio that does not meet the definition of Major, Medium or Lite IT investment and has an annual expenditure less than \$250K.
- (3) Small and Other IT Investments must be reported in the OMB Exhibit 53.
- (4) A Small and Other IT Investment is an investment that meets the criteria listed below:
 - (i) Annual expenditure less than \$250K; and
 - (ii) OMB reportable.

Individuals certified prior to October 1, 2015 are grandfathered to meet the certification requirements for FAC-P/PM at their current level if the current certification is approved in the Federal Acquisition Institute Training Application System (FAITAS) and includes a current "Certificate of Achievement."

FAITAS - pursuant to 41 U.S.C. §1704(e), FAITAS is the system for all federal civilian Agency employees to electronically submit training applications, certification requests, continuous learning requests/achievements, and manage their career development. FAITAS is the official

system of record used by EPA to manage all FAC program certifications, training, continuous learning requests/achievements, and individual development plans.

For all newly assigned program and project managers, the completion date for these certifications is 12 months from the date of assignment to the program or project.

1.6.6.6 Federal Information Technology Acquisition Reform Act (FITARA) Requirements.

Employees identified as IT Program managers as designated by the Office of Personnel Management (OPM) in the IT Program Management Career Path Guide, November 2011, are required to enroll in FAITAS. A career path is a progression of positions in one or more occupational series. It is common for individuals to be assigned into Federal IT Program Management via the General Schedule occupations (GS-2210, GS-1101, GS-801, GS-1550, GS-301, GS-340, GS-343, and GS-346).

As a FITARA requirement, EPA is required to report to OMB the number of IT program managers utilizing the specialized career path. As a result, Agency IT PMs must report their “acquisition program assignment,” - Federal IT Program Management - in FAITAS. OPM has prescribed the following 11 parenthetical titles to provide further specificity to job titles within the Information Technology Management series, GS-2210:

Policy and Planning	Enterprise Architecture	Applications Software
Security	Systems Analysis	Operating Systems
Network Services	Data Management	Internet
Systems Administration	Customer Support	

The FAITAS enrollment steps are as follows:

- Login into FAITAS
- Click the tab “My Status”
- Click “My Acquisition Program Assignment”
- Click “Add a New Assignment”
- Select Button “Federal IT Program Management”
- Select Button “IT Program Manager”
- Click “Save Assignment”

1.6.6.7 FAC-P/PM Framework.

(a) *Basics.*

The FAC-P/PM is founded on (1) core competencies that are considered essential for successful program and project management, (2) experience requirements, and (3) continuous learning to maintain skills currency. This program does not require employees to achieve each certification

level in progression order from entry- through senior-level; however, P/PMs may only be certified at a certain level after they achieve all competencies for the requested certification level. In addition, the lower level certification competencies must be satisfactorily demonstrated to perform the duties at the higher level of certification being requested. For example, an individual may be certified at the senior level without having been certified at the entry and mid-levels, but must satisfactorily demonstrate the competencies for the entry and mid-levels in their résumé. Likewise, an individual may be certified at the mid-level without having been certified at the entry level, but must satisfactorily demonstrate the competencies for the entry level in their résumé.

While a specific training curriculum is not set to address each of the competencies, the FAI at www.fai.gov offers specific courses under the code FPM (Entry Level 100 series, Mid-Level - 200 series, and Senior Level-300 series) to meet the competencies. **Note:** Before an employee can enroll in a FAI sponsored FPM 300 Level course, the employee must have completed the Program and Project Managers mid-level certification.

Also, the Defense Acquisition University (DAU) offers courses, (DAU Courses and Resources), that can be used to meet the competency requirements. Registration for these courses are through FAITAS. These courses are at no cost. **Note:** Training courses are subject to changes in accordance with DAU and FAI online and onsite curriculum updates and changes.

(b) Program Structure.

There are three FAC-P/PM certification levels with different initial certification requirements. The following information describes the different levels:

(1) Entry-Level - requires a minimum of 104 hours of competency training; one year of project management experience within the last five years; and 80 hours of continuous learning every two years. The one year of experience in project management may be as either a government employee or contractor. See Appendix 1.6.6-A - EPA FAC-P/PM Entry Level Application.

(2) Mid-Level - requires a minimum of 112 hours of competency training: two years of program or project management experience within the last five years which shall include a minimum of one year of experience on a federal program or project as either a government employee or contractor; and 80 hours of continuous learning every two years. See Appendix 1.6.6-B - EPA FAC-P/PM Mid-Level Application.

(3) Senior-Level P/PM - requires a minimum of 120 hours of competency training: four years of program or project management experience within the last ten years which shall include a minimum of two years of experience on a federal program or project as either a federal employee or a contractor; and 80 hours of continuous learning every two years. See Appendix 1.6.6-C - EPA FAC- P/PM Senior Level Application.

(c) *Certification requests.*

All certification requests, continuous learning requests and achievement requests must be submitted in *FAITAS* at www.fai.gov (see section 1.6.6.10 below) and must include supporting documentation (resume, transcripts and/or certificates of training, and Project Management Institute certification transcripts with detail training listing, if applicable). Requests will be reviewed and evaluated based on each individual application submission and supporting documentation to ensure all requirements for the certification level requested are met.

The FAI FAC-P/PM competency training crosswalk is available under FAC-P/PM on the OAS Training OAS's webpage at <http://oamintra.epa.gov/node/424>.

(d) *FAC-P/PM Certification and Project Management Institute (PMI) Equivalency.*

The information below has been rescinded and replaced by Appendix 1.6.6 -F- Letter of Understanding between FAI and PMI, dated August 3, 2016.

FAI and the Project Management Institute (PMI) signed a letter of understanding, dated July 2009, that sets FAC-P/PM and PMI certification and experience equivalencies. The relationship between FAC-P/PM certification and PMI credentials is included in the following chart.

FAC-P/PM and PMI Outcome Partnership Agreement

PMI Credential	Satisfies FAC-P/PM Coursework Area and Experience	
CAPM Certified Associate in Project Management	24 hours course on basic project management	1 year within the last 5 years
PMP Project Manager Professional	24 hours course on intermediate project management	2 years within the last 5 years
PMP Program Management Professional	24 hours course on advanced project management	4 years of program/project management experience

Note: Current FAC-P/PM holders with a PMP certification can submit the PMP certificate to be granted 40 CLPs for one time only.

In addition, if an individual holds a FAC-P/PM certification and documents the coursework taken to achieve that level, it satisfies the education requirement for the PMI credential at the associated level as follows:

FAC-P/PM Certification	Satisfies PMI Credential Education Requirement
Entry Level FAC-P/PM in Project Management	CAPM Training Requirement of 23 hours of Project Management education
Mid-Level FAC-P/PM in Project Management	PMP Training Requirement of 35 hours of Project Management education

(e) *Reciprocity with Other Certifications (Fulfillment).*

(1) EPA recognizes and accepts FAC-P/PM certifications issued by other Federal civilian agencies and those PM certifications issued under the Department of Defense (DoD) Defense Acquisition Workforce Improvement Act (DAWIA). Individuals certified with a FAC-P/PM from another civilian federal agency or DAWIA PM Certification may seek recognition for fulfillment of the FAC-P/PM requirements at the same level. These individuals must provide proof of prior PM certification and completion of the required 80 CLPs to keep the certification current in compliance with the two year maintenance requirements for recertification.

(2) If an individual has a profile from another Federal civilian agency in FAITAS, the individual must update the account and profile information to reflect EPA as the current agency and change his/her supervisor. If an individual is coming from DoD, an account and profile must be created in FAITAS to request certification in EPA.

(3) To obtain FAC-P/PM certification at EPA:

(i) Individuals coming from another civilian federal agency must submit a new certification request in FAITAS with the supporting documents (EPA FAC P/PM Entry, Mid-Level or Senior Level Application, PM certificate; FAC-P/PM “Achievement Certificate”; and continuous learning documents for the two years’ period prior to application, if applicable).

(ii) Individuals coming from DoD must submit a new certification request in FAITAS with the supporting documents (EPA FAC P/PM Entry, Mid-Level or Senior Level Application; DAWIA PM certificate; and continuous learning documents for the two years’ period prior to application, if applicable).

(f) *Request Twelve Months FAC-P/PM Certification Date Extension.*

(1) The EPA SPE may extend in writing, on a case-by-case basis, the date upon which a P/PM must be certified by an additional 12 months, if it is in the best interest of the Agency. Extension authority was created to provide flexibility to accommodate unique circumstances that may be faced by an Agency, and extensions are the exception rather than the rule. **“Blanket” extensions do not exist.**

(2) If the supervisor determines that FAC-P/M certification extension is needed for an individual, the supervisor shall prepare a memorandum titled “*Request Twelve Months FAC-P/PM Certification Date Extension,*” (see Appendix 1.6.6-D) for endorsement by the program director with the reasons for and conditions of the extension and submit to the ACM.

(3) The ACM will review the request for completion and recommend approval or disapproval before forwarding the request to the SPE for final approval/disapproval. The ACM will contact the requesting supervisor to discuss the request and any additional

information needed to support the request for extension before recommending disapproval. The ACM will email a copy of extension request memorandum with the SPE extension decision to the supervisor and program director.

(4) The ACM shall maintain all requests for extension and supporting documentation of approval or disapproval by the SPE.

(g) *Continuous Learning Requirements.*

- (1) To maintain a FAC-P/PM, certified professionals are required to earn 80 CLPs of skills currency every two years. The two-year anniversary is set by the date the individual is certified. If an individual does not meet the 80 hour CLP requirement, the individual's certification will lapse, and the Agency may remove the manager from the program or project. In order to reinstate the certification, the individual must complete 80 hours of continuous learning within a two year period (see Section 1.6.6.8 of this policy).
- (2) Individuals who hold both FAC-Contracting Officer Representatives (CORs) and FAC-program/ project managers certification must separately fulfill the continuing learning requirements for both FAC-COR and FAC-P/PM certifications., see EPAAG Subsection 1.6.5 - Contracting Officer's Representatives Three-Tiered Program (March 2015); and the FAC P/PM requirement in this policy.
- (3) FAC-P/PM certification holders are responsible for tracking and maintaining individual training records, monitoring and managing their acquisition training needs, and notifying their immediate supervisors of ongoing training requirements for maintenance of their certifications.
- (4) The supervisor monitors the continuous learning requirements to ensure their employees' FAC-P/PM certifications remain in good standing.
- (5) The ACM and Bureau Continuous Learning Manager (BCLM), monitor the continuous learning requirements in FAITAS to ensure certifications remain in good standing.
- (6) Supporting documentation must be submitted in FAITAS continuous learning point requests, for training courses and events/ activities that are eight (8) CLPs or more (training course certificate of completion, memorandum signed by supervisor that attest and certify event/ activities).
- (7) Continuous learning activities include, but are not limited to the following:
 - (i) Training activities, such as teaching, self-instructed study, and mentoring;
 - (ii) Courses completed to achieve certification at the next higher level;
 - (iii) Professional activities, such as attending/speaking/presenting at professional seminars/symposia/conferences, publishing papers, and attending workshops;

(iv) Educational activities, such as formal training and formal academic programs; and,

(v) Experience, such as developmental or rotational assignments.

(8) EPA Guidance on Meeting the Requirement for Continuous Learning Points is located on the OAS's Training webpage at <http://oamintra.epa.gov/node/565>.

(9) A listing of all P/PMs with current certifications in FAITAS will be posted on the [OAS Training page under FAC-P/PM](#). This listing is updated once per month.

(h) Mandatory Training for Recertification.

Mandatory training requirements for P/PMs are determined by regulatory guidance from the OMB; the Government Accountability Office (GAO); and Agency requirements based on Office of Inspector General reviews and audits. The following chart shows mandatory training courses that must be taken during the FAC-P/PM recertification cycle beginning October 2, 2016. It is not necessary to repeat these courses if they have already been taken in a previous cycle. Future mandatory training requirements will be posted on the OAS Training page at <http://oamintra.epa.gov/node/424> and information related to these requirements and availability will be disseminated by email.

Mandatory Training for Recertification

Buying accessible E&IT (1.25 CLPs): This training course can be found on the Section508.gov website at https://www.section508.gov/ under 508 Universe Training.
CLC 051 Managing Government Property in the Possession of Contractors (2 CLPs): Register for this course at https://www.atrrs.army.mil/faitas/External/Login/ (Manage Career-Training-Search for Training-Continuous Learning Modules).
<i>Note: The certificate of completion for the 508 training course must be uploaded into FAITAS continuous learning module. FAITAS will automatically record completion of CLC 051, so there is no need to upload a certificate.</i>

(i) Recording Mandatory Training Taken in a Prior Recertification Period.

(1) For the individuals who have previously taken any or all of the Mandatory Training courses in a prior recertification period (training cycle), they should not retake such training again during the current recertification cycle.)

(2) These individuals must record all previously completed training as one entry into the FAITAS Continuous Learning Module. This is a 1-point request. The 1-point validates the request and moves it forward in the FAITAS system's workflow process. The following steps explain how to record mandatory training taken in a prior recertification period in FAITAS:

Event Name: Mandatory Training Completed During a Prior Recertification Period

Event Description: (List all prior completed training)

For example:

(Completed April 10, 2017): Buying accessible E&IT (1.25 CLPs)

(Completed April 18, 2013): CLC 051 Managing Government Property in the Possession of Contractors (2 CLPs)

Event Type: Training (classroom or online)

Start Date: (This is the date you are submitting the request for CLPs)

End Date: (This is the date you are submitting the request for CLPs)

Number of Points Requested: 1

Supporting Documentation: Attach a signed memo with previous courses taken with dates to support this training request for supervisor's approval in FAITAS. Note: any courses taken in FAITAS are included in the individual's account training history file.

1.6.6.7 Core-Plus Specialization Certification

(a) *General.* The purpose of the FAC-P/PM core-plus specialization is to establish additional training, experience and continuous learning requirements for FAC-P/PM certified personnel who manage specific investments requiring specialized knowledge, skills and abilities. The first core-plus specialization area included in this certification program is for information technology (FAC-P/PM-IT). This new core-plus specialization for IT P/PMs was developed in collaboration with OMB's Office of E-government and Information Technology. New core-plus specialization areas approved by OMBOFPP will be announced by FAI at www.fai.gov.

(b) *Assignment.* FAC-P/PM-IT core-plus specialization certification is not mandatory for all P/PMs; however, it must be held in conjunction with a FAC-P/PM Level II and Level III certification by P/PMs assigned as P/PMs managing major and medium IT investments as described in this policy.

- (1) The required completion date for a core-plus specialization certification is 18 months from the date of assignment to a program or project requiring a FAC-P/PM and a core-plus specialization certification, effective with this policy.
- (2) Obtaining a FAC-P/PM core-plus specialization is not intended to confer qualification for any specific assignment. Assignment of personnel remains a management function.
- (3) A FAC-P/PM and/or Core-Plus Specialization certification do not entitle an employee to promotion, special assignment, or any other action that is at management discretion.

(c) *Competencies.* As with FAC-P/PM, an applicant can satisfy the core-plus competency requirements through training, education, other relevant certification programs, or demonstration and documentation through fulfillment of knowledge, skills, and abilities, for example, college transcript with major in Information Systems. FAI shall identify the competencies required for a FAC-P/PM core-plus specialization based upon the FAC-P/PM core-plus model. The competencies for a FAC-P/PM core-plus specialization shall be maintained by FAI at www.fai.gov. Core-plus competencies will be updated periodically to meet current and future acquisition workforce requirements and to reflect emerging trends in the government's acquisition practices. To obtain a FAC-P/PM core-plus specialization, agencies may require additional competency requirements beyond the core competencies established by FAI for a given core-plus area.

(d) *Certification Levels.* The ability to specialize implies a demonstrated level of skill beyond the entry level. For this reason, a FAC-P/PM core-plus specialization will only be granted to holders of mid- and senior-level FAC-P/PMs. For those P/PMs having a core-plus specialization, advancing from mid-level to the senior-level core FAC-P/PM certification carries with it the core-plus specialization, assuming the core-plus continuous learning requirements have been met. The application to request FAC-P/PM-IT core-plus specialization certification is included in this policy as Appendix 1.6.6-E - FAC P/PM-IT Core-Plus Specialization Application.

(e) *Training.* Training that is current and results in gaining the required P/PM core-plus competencies is strongly recommended, as technology and best practices in these specialty areas may evolve rapidly. The FAC-P/PM-IT core-plus specialization requires a minimum of 32 hours of competency training for mid-level certification and 40 hours of competency training for senior level certification. The training learning outcomes must be aligned to support the FAC-P/PM-IT core-plus specialization competencies and performance outcomes. While a specific curriculum is not articulated, training plans for FAC-P/PM core-plus specializations that can assist individuals in determining their training and development needs will be maintained by FAI at www.fai.gov.

(f) *Experience.* At least two years of program or project management experience supporting projects and/or programs within the given core-plus specialization area is required to obtain the FAC-P/PM Core-Plus specialization certification. Core-plus experience may be included in the experience requirement for FAC-P/PM certification and documented on their résumé (**the résumé is required; the Standard Form (SF) 50 cannot be substituted for the résumé.**)

(g) *Continuous Learning.* FAC-P/PM core-plus professionals are required to earn 80 CLPs to keep skills current every two years. Maintenance of CLPs is shared between the core-plus area and the core FAC-P/PM continuous learning requirement. At least 20 of the 80 CLPs required must be dedicated to continuous learning in topics associated with the core-plus specialization area. If an individual fails to obtain the 80 CLPs requirement, the core FAC-P/PM and core-plus specialization will simultaneously lapse. To reinstate a certification status after a certification has lapsed, the 80 CLPs requirement must be completed within the two year period, including the requirement for 20 of the 80 CLPs dedicated to continuous learning in topics associated with the core-plus specialization area.

1.6.6.8 Expired/Revoked FAC-P/PM and FAC-P/PM Core-Plus Specialization Certification

(a) If a FAC-P/PM is expired/lapsed in FAITAS this means that the FAC-P/PM certification has is in a current state for a two year period before being revoked. This happens because of one of following reasons:

- (1) The P/PM certification holder failed to achieve the required number of CLPs during the recertification cycle;
- (2) The required number of CLPs have not been entered into FAITAS for supervisor approval;
- (3) The required number of CLPs has been entered into FAITAS and approved by the supervisor; but, the Continuous Learning (CL) “Achievement Request” has not been submitted by the P/PM to the supervisor for approval;
- (4) The required number of CLPs has been entered into FAITAS and approved by the supervisor; and the P/PM submitted the CL Achievement Request to the supervisor for approval; but, the supervisor did not approve and submit the CL Achievement Request to the BLCM for final approval.

(b) If an individual fails to obtain the 80 CLPs requirement, the core FAC-P/PM and core-plus specialization will simultaneously expire/lapse. Also, if an employee does not meet the 80 hour CLPs requirement, the employee certification will expire/lapse and the supervisor may remove the manager from the program or project.

(c)*Reinstatement of an expired/lapsed certification.* In order for the certification to be reinstated, the employee must complete the required continuous learning hours to meet the previous 80 hour requirement. Following reinstatement, the employee must complete the next 80 hour continuous learning requirement in the existing CL period; i.e., the two year anniversary date does not change. For example, PM Paul was certified on August 20, 2007. He maintained CL requirements through the anniversary periods from 2007 through 2011. From August 21, 2011 through August 20, 2013, Paul only obtained 60 hours of CLPs. His certification has expired. In September 2013, Paul attends a 40 hour training course. Twenty hours of the 40 hour training course can now be designated by the ACM in the previous two year cycle to reinstate the expired/lapsed certification as current, the remaining 20 hours counts toward the 80 hour requirement for August 21, 2013 through August 20, 2015. **Note:** Prior approved CLPs in an employee’s file are not always available to the ACM to designate in order to reinstate a certification after a certification has expired/lapsed, for example: Period Begin Date: Nov 20, 2013; Period End Date: Nov 19, 2015; Points Awarded: 29; Pointed Needed: 51; Lapsed Days: 214; Note to ACM: No Continuous Learning Points available for points designation.

(d)*Reinstatement of a revoked certification.* In order for a revoked certification to be reinstated, the employee must reapply for a new certification using the initial certification process as stated in this policy for FAC-P/PM and FAC-P/PM core-plus specialization at the same level as the expired certifications.

1.6.6.9 Additional P/PM Requirements

(a) *Standards of Conduct.*

All Government employees must follow the Standards of Ethical Conduct for Employees of the Executive Branch, codified in 5 C.F.R. Part 2635 (1/1/99 Edition) as amended at 64 FR 2421-2422 (Jan. 14, 1999) and 64 FR 13063-13064 (Mar. 17, 1999), and 5 C.F.R 2638.704. P/PMs are required to complete the Agency mandatory ethics training each calendar year. A copy of the entire statute is available at the United States Office of Government Ethics Internet site, <http://www.oge.gov/home.aspx>.

If applicable, P/PMs must file the Office of Government Ethics Form 450, Confidential Financial Report, with the cognizant Deputy Ethics official. A list of Agency Deputy Ethics officials is available on the Agency Intranet at <http://intranet.epa.gov/ogc/ethics/deos.htm>.

(b) *P/PMs Responsibilities for Section 508 Compliance.*

In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. Section 508 (29 U.S.C. §794 d) applies to all Federal agencies when developing, procuring, maintaining, or using EIT, and has enforceable standards with which agencies must comply, including Statements of Work (SOW) or Performance Work Statements (PWS) that require a contractor or consultant to write, create or produce any products or services that are EIT intended for use in response to a solicitation - including electronic reports, documents, charts, posters, presentations or video material that could be presented in response to a contract. All EIT products or services produced or delivered by contractors or consultants must meet applicable Section 508 accessibility standards. The standards cover:

- Software Applications and Operating Systems
- Web-based Intranet and Internet Information and Applications
- Web based training
- Telecommunications Products
- Videos or Multimedia Products (All videos and multimedia products which EPA produces shall be captioned using open captioning)
- Self-Contained, Closed Products (Products such as copiers, fax machines, and calculators which generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology)
- Desktop and Portable Computers

As noted in section 1.6.6.6(f) above, to ensure understanding and compliance with the law, all EPA FAC-P/PM certificate holders are required to complete mandatory 508 training during recertification as discussed in this policy.

1.6.6.10 Federal Acquisition Institute Training Application System (FAITAS)

- (a) Oversight of the FAC-P/PM program has been delegated by the SPE to the Acquisition Career Manager (ACM) - also known as the Agency Certification Manager (ACM). The ACM is also the Agency's FAITAS System Administrator; and, this role is not re-delegable. The ACM is a Federal employee of OAS who is formally appointed by the SPE with the responsibility for strategic acquisition human capital management; and management of the Agency's acquisition workforce training, career development, and certification programs in accordance with the requirements of the Services Acquisition Reform Act of 2003 (SARA) (P.L. 108-136), OFPP Policy Letter 05-01, *Developing and Managing the Acquisition Workforce* (April 15, 2005); section 4307(a) of the Clinger-Cohen Act (40 U.S.C. § 1401(3)); and amending section 37 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. § 433).
- (b) In accordance with the OMB, OFPP Memorandum, *Increasing Efficiencies in the Training, Development, and Management of the Acquisition Workforce*, September 3, 2013, Pursuant to 41 U.S.C. § 1704(e), each civilian agency governed under the Chief Financial Officers (CFO) Act and its acquisition workforce members shall use FAITAS. EPA is designated as a CFO Act agency.
- (c) FAITAS is the central acquisition workforce information system for all civilian agencies, serving as the mechanism for tracking and maintaining certification and training records to effectively manage the acquisition workforce, including the FAC- P/PM program. FAITAS is accessible from <http://www.fai.gov>.
- (d) P/PMs are responsible for uploading and maintaining certification supporting documentation in FAITAS in a timely manner to reflect current training and certification status. If P/PMs experience problems with FAITAS, an online e-help desk ticket must be submitted to FAI at www.fai.gov (FAITAS- Login- Help-Contact Us- **FAI Help Desk**: Monday - Friday, 7:30 a.m. - 5:30 p.m. Call: (703) 752-9604 - [FAI Help Desk Ticket](#)).
- (e) *FAITAS Continuous Learning Module (CLM)*.
 - (1) The CLM will automatically document training taken through FAI and the Defense Acquisition University (DAU) with a registration in FAITAS. Employees can upload documents for training taken outside the FAI/DAU training environment in the CLM. Documents or files cannot be larger than 4 MB.
 - (2) When the FAC-P/PM holder adds CLPs in "My Continuous Learning Request" in FAITAS, the file flows to the supervisor for review/approval. Upon completion of the required number of CLPs, the FAC-P/PM holder must submit the "My Achievement Request" to the supervisor for approval; the supervisor submits the "Achievement Request" to the BCLM - a member of the OAM Training Team- who will verify if training meets the CLP requirements guidance and approve/disapprove the achievement request for

recertification. Once the BCLM approves the “Achievement Request,” the recertification process is complete.

(3) FAITAS creates a CL “Certificate of Achievement” which validates recertification achievement of the required number of CLPs to maintain certification into the next recertification cycle. The new CL period does not start until the current CL period ends. For example, a FAC-P/PM holder with a current CL period of 10/2/2014 to 10/1/2016 completes 80 CLPs, submits the achievement request, achievement request approved by supervisor, BLCM approves achievement request, and an Achievement Certificate is created to maintain the certification in a current status. When the recertification achievement current period officially closes in FAITAS, the CL period is reset as 10/2/2016 to 10/1/2018.

(4) FAC-P/PM holders’ CL cycle is based on the actual date of certification approved in FAITAS. ***The original certification date on the FAC-P/PM certificate will not change.*** The “Achievement Certificate” is what shows that a FAC-P/PM holders is in a current status for maintaining the certification for the next cycle.

Enclosures:

Appendix 1.6.6-A - EPA FAC-P/PM Entry Level Application.

Appendix 1.6.6-B - EPA FAC-P/PM Mid-Level Application

Appendix 1.6.6-C - EPA FAC-P/PM Senior Level Application

Appendix 1.6.6-D - Request Twelve Months FAC-P/PM Certification Date Extension
Memorandum

Appendix 1.6.6-E - FAC-P/PM-IT Core-Plus Specialization Application

**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Entry Level**

EPAAG 1.6.6-A

PART A - EMPLOYEE INFORMATION

Name (<i>Last, First, Middle Initial</i>):			
Email Address:			
Phone:		AAShip Name:	
Agency Address:			
Title, Series, Grade:		FAC P/PM Level:	Entry Level (1)

PART B - CERTIFICATION REQUIREMENTS

To obtain the FAC-P/PM Entry Level Certification, Program and Project Managers must meet the following requirements:

1. EXPERIENCE

Requirement: One year of project management experience within the last five years. The one year of experience in project management may be as either a government employee or contractor.

<input type="checkbox"/>	I certify that I have met the experience requirements for FAC-P/PM Entry Level Certification (résumé attached). (<i>Employee must initial the box.</i>)
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2. TRAINING

Requirement: A minimum of 104 hours of competency training in the seven FAC-P/PM core competencies with performance outcomes.

<input type="checkbox"/>	I certify that I have met the training requirements for FAC-P/PM Entry Level Certification. (<i>Employee must initial</i>)
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3. CONTINUOUS LEARNING

Requirement: A minimum of 80 continuous learning points (CLPs) every two years after the initial date of certification.

<input type="checkbox"/>	I certify that I have met the continuous learning requirements for FAC-P/PM Entry Level Certification, if applicable. Documentation, including certificates of training and/or transcripts, must be attached to show completion of CLPs. (<i>Employee must initial the box</i>)
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4. COMPETENCIES

Requirement: Demonstrate proficiency in the seven FAC-P/PM core competencies for Entry Level Certification as described below (employee included details on how each competency has been met are included below):

<input type="checkbox"/>	I certify that I have met the competency requirements for FAC-P/PM Entry Level Certification. (<i>Employee must initial the box.</i>)
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(NEXT)

EPA Federal Acquisition Certification for Program/Project Manager (FAC-P/PM) - Entry Level

EPAAG 1.6.6-A

Competency 1. Requirements Development and Management Processes

Description:

Requirements development and management processes include: (1) knowledge of government-wide and agency-specific investment management requirements, filling gaps in capability needs, acquisition policies, and program management strategies that support assigned missions and functions; (2) understanding how to manage risk and the myriad of factors that influence cost, schedule, and performance; (3) attention to lessons learned; and (4) an understanding of the metrics needed to manage programs and projects that deliver quality, affordable, supportable, and effective systems/products.

Entry-Level Performance Outcomes:

- 1.1.1. Recognize the applicable laws, statutes and regulations that control the Federal acquisition process.
- 1.1.2. Identify the major organizations that control and execute the Federal acquisition process.
- 1.1.3. Comprehend the interrelationship of the applicable governance, budgeting and requirements development processes which embody all Federal acquisitions.
- 1.1.4. Describe the requirements development process and the criticality of meeting user/mission requirements.
- 1.1.5. Comprehend a general life-cycle model an agency may use to select concepts to meet user/mission requirements.
- 1.1.6. Recognize the role of the Acquisition Strategy and other key planning documentation.
- 1.1.7. Define the utility, basic tenets and guidelines for preparing an Integrated Master Plan and Integrated Master Schedule.
- 1.1.8. Recall the concept of Total Ownership Cost (TOC) and other cost descriptions that define cost accounting of the program.
- 1.1.9. Recognize the program manager's responsibility for managing program cost, schedule and performance to achieve program success.
- 1.1.10. Generalize the risk/opportunity management process.
- 1.1.11. Compare and contrast the major planning attributes of traditional, information technology, services and facilities construction programs.
- 1.1.12. Comprehend the concept and utility of working groups and project oriented teams.
- 1.1.13. Identify the functions of membership in a working group or project oriented team.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-A

Competency 2. Systems Engineering

Description:

The recognition of scientific, management, engineering and technical skills used in the performance of system planning, research and development, with an emphasis on performing and managing technical processes as well as the technical management process itself. This includes knowledge of the nature of the requirements development process, decision analysis methods, technical assessment, configuration management, and interface management.

Entry-Level Performance Outcomes:

- 2.1.1. Recognize the importance of integrating the SE life cycle and its technical management and review process with the acquisition life cycle.
- 2.1.2. Identify and relate the utility of key technical management processes and tools used in the SE process, including: configuration management, technical performance measures, and technical design reviews.
- 2.1.3. Recognize the roles and responsibilities of the Government and the contractor in the SE process.
- 2.1.4. Recognize the utility of using work breakdown structures (WBS) as a technical management tool across all functional disciplines in the acquisition process.
- 2.1.5. Discuss the concept of systems management and the role of human factor engineering in system engineering.
- 2.1.6. Define the key aspects of a plan for technical assessment that measures technical progress and assist in the development of a technical assessment plan.
- 2.1.7. Define the key aspects of risk management in the context of systems engineering and participate in development of a risk/opportunity management plan.
- 2.1.8. Describe the content for a technical data management plan.
- 2.1.9. Summarize the process for monitoring and selecting a balanced systems design solution.
- 2.1.10. Comprehend the need for design considerations accounting for: environmental, safety and occupational health (ESOH); human factors; and security factors.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-A

Competency 3. Test and Evaluation

Description:

Knowledge of efficient and cost effective methods for planning, monitoring, conducting and evaluating tests of prototype, new or modified systems equipment or material, including the need to develop a thorough strategy to validate system performance through measurable methods that relate directly to requirements and to develop metrics that demonstrate system success or failure.

Entry-Level Performance Outcomes:

- 3.1.1. Recognize the importance of test and evaluation to acquisition decisions.
- 3.1.2. Explain efficient and cost effective methods for planning, monitoring, conducting, and evaluating tests of developmental, commercial or modified systems.
- 3.1.3. Identify the role that T&E plays in the systems engineering process.
- 3.1.4. Define and determine the need for a comprehensive test and evaluation approach, including the use of modeling and simulation.
- 3.1.5. Explain the value of a comprehensive and documented test and evaluation strategy and how this strategy evolves into test and evaluation plans, such as a Test and Evaluation Master Plan (TEMP).
- 3.1.6. Discuss various Federal agency processes for conducting test and evaluation, including the need to conduct user testing or operational test and evaluation (OT&E).

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-A

Competency 4. Life-Cycle Logistics

Description:

Knowledge of efficient and cost effective methods for planning, monitoring, conducting and evaluating tests of prototype, new or modified systems equipment or material, including the need to develop a thorough strategy to validate system performance through measurable methods that relate directly to requirements and to develop metrics that demonstrate system success or failure.

Entry-Level Performance Outcomes:

- 4.1.1. Express understanding of the concept of integrated product support, the product support elements and purpose of a product support plan.
- 4.1.2. Comprehend performance-based logistic efforts that optimize total life cycle costs while maintaining system readiness.
- 4.1.3. Recognize alternative logistics support practices, including supply chain management, best public sector and commercial practices and technology solutions, and their utility and appropriateness according to the type and scope of the acquisition program.
- 4.1.4. Comprehend the concepts of availability, supportability, and reliability/maintainability while minimizing cost, the logistic footprint, and interoperability.
- 4.1.5. Define interoperability as a key product support factor, along with examples of interoperability application.
- 4.1.6. Assist in implementation of alternative logistics support practices.
- 4.1.7. Recognize the importance of planning for the deployment of a new system or project.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Entry Level**

EPAAG 1.6.6-A

Competency 5. Contracting

Description:

Knowledge of the supervision, leadership and management processes and procedures involving the procurement of capital assets, supplies and services, including construction, research and development, and science and engineering technical services as governed by the Federal Acquisition Regulation (FAR) and associated agency-specific additions to the FAR. Contracting involves acquisition planning to include: performance-based considerations; cost and price analysis; solicitation and selection of sources; preparation, negotiation and award of contracts; all phases of contract administration; termination options and processes for closeout of contracts; and legislation, policies, regulations, methods used and business and industry practices.

Entry-Level Performance Outcomes:

- 5.1.1. Contrast the roles and responsibilities between the contracting officer and the program manager.
- 5.1.2. Recognize the need for a comprehensive program specification and requirements statement that fully and correctly defines the program.
- 5.1.3. Describe pre-award actions and the associated contracting methods required by the Federal Acquisition Regulation (FAR). Recognize the need for the Program Manager to participate in pre-award actions required by acquisition planning (FAR Part 7.1).
- 5.1.4. Recall the formal source selection process, including acquisition planning and pre-solicitation processes; market research; the request for proposal (RFP); evaluation of proposals; and contract award.
- 5.1.5. Define the process for developing a comprehensive program specification, Statement Of Work (SOW), and/or Statement of Objective (SOO) that fully and correctly defines the project, addressing roles and missions of the government and contractor.
- 5.1.6. Recognize the benefits of performance-based acquisition.
- 5.1.7. Recognize the need to formulate a source selection plan that allows for best value
- 5.1.8. Identify key activities in contract administration, including contract modifications and terminations.
- 5.1.9. Illustrate the role of the COR during all phases of the contracting process.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

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EPAAG 1.6.6-A

Competency 6. Business, Cost and Financial Management

Description:

Knowledge of the forms of cost estimating, cost analysis, reconciliation of cost estimating, government and industry financial planning, formulating financial projects and budgets, budget analysis/execution, cost-benefit analysis, Earned Value Management (EVM), business case analysis, and other methods of performance measurement.

Entry-Level Performance Outcomes:

- 6.1.1 Comprehend the Congressional appropriation process, the various appropriation categories, and the rules for using the funds from each appropriation.
- 6.1.2 Generalize common uses of cost estimating, cost analysis, financial planning, formulating financial projects and budgets, budget analysis/execution, benefit-cost analysis, EVM, and other methods of performance measurement.
- 6.1.3 Recognize cost estimating processes, methods and techniques.
- 6.1.4 Define the Integrated Baseline Review (IBR) process or similar process that reviews program cost and schedule performance.
- 6.1.5 Recognize the basic concepts of Earned Value Management (EVM), including cost and schedule program status indicators, and how EVM relates to managing program risk.
- 6.1.6. Comprehend how to allocate funds within appropriation categories and how to use the funds from each appropriation.
- 6.1.7. Generalize the agency's policy and for financial planning, programming, budget development, budget execution and OMB A-11 application.
- 6.1.8 Recognize common formats and approach to building and analyzing a viable and relevant Business Case containing both quantitative and qualitative decision criteria.
- 6.1.9. Recall the common types of software instruments available for performance measurement of programs.
- 6.1.10. Recognize the statutory requirements for measuring performance of acquisition programs.
- 6.1.11. Recognize the benefits of using balanced and goal oriented performance measures in managing a program.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPA Federal Acquisition Certification for Program/Project Manager (FAC-P/PM) - Entry Level

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Competency 7. Leadership

Description:

Leadership and professional acumen includes those attributes targeted toward leading and managing a multi-functional project team to satisfactory achievement of program goals, as well as influencing both horizontal and vertical stakeholder relations. Leaders take a long-term view and build a shared vision with others, acting as a catalyst for organizational change. Leaders influence others to translate vision into action and inspire team commitment, spirit, pride, and trust. Leaders develop networks and build alliances while collaborating across boundaries to build strategic relationships and achieve common goals. Leaders foster an inclusive workplace where diversity and individual differences are valued and leveraged to achieve the vision and mission of the organization. Leaders hold themselves and others accountable for measurable high-quality, timely, and cost-effective results.

Entry-Level Performance Outcomes:

- 7.1.1. Recognize the basic role of the Program Manager; the qualities of leadership and management as they relate to the Program Manager; and the common leadership challenges faced by Program Managers.
- 7.1.2. Recall accepted methods how to lead/manage a project team to satisfactory achievement of project goals.
- 7.1.3. Recall how to identify problems, determining accuracy and relevance of information and using sound judgment when offering solutions.
- 7.1.4. Relate the various techniques to adapt behavior or work methods in response to new information or changing conditions.
- 7.1.5. Describe methods to hold self and others accountable for measurable, high-quality, timely, and cost-effective results.
- 7.1.6. Comprehend the tenets of effectively communicating information in a succinct and organized manner, orally and in writing.
- 7.1.7. Recognize the value of a customer-oriented approach when assessing needs, resolving conflict, and satisfying expectations.
- 7.1.8. Recognize how Continuous Process Improvement (CPI) is used to enhance an organization's performance and identify key CPI methodologies.
- 7.1.9. Define the principles of ethics and values inherent to the systems acquisition process and identify the core ethical values associated with acquisition decision making.
- 7.1.10. Recognize the roles organizational culture and leadership play in establishing an ethical work environment.
- 7.1.11. Recognize how interpersonal and organizational conflict impacts the program management office and select relevant conflict management techniques and methods to address that conflict.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Entry Level

EPAAG 1.6.6-A

PART C - SIGNATURES

Applicant:

By signing this form, I certify that I have met the certification requirements for FAC-P/PM Entry Level Certification.

Name:		Signature:		Date:	
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Supervisor:

I recommend this applicant for FAC-P/PM Entry Level Certification.

Name:		Signature:		Date:	
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Director:

I approve this applicant for FAC-P/PM Entry Level Certification.

Name:		Signature:		Date:	
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**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Mid Level**

EPAAG 1.6.6-B

PART A - EMPLOYEE INFORMATION

Name (<i>Last, First, Middle Initial</i>):			
Email Address:			
Phone:		AAShip Name:	
Agency Address:			
Title, Series, Grade:		FAC P/PM Level:	Mid-Level (2)

PART B - CERTIFICATION REQUIREMENTS

To obtain the FAC-P/PM Mid-Level Certification, Program and Project Managers must meet the following requirements:

1. EXPERIENCE

Requirement: Two years of project management experience within the last five years which shall include a minimum of one year of experience on a federal program or project as either a government employee or contractor.

<input type="checkbox"/>	I certify that I have met the experience requirements for FAC-P/PM Mid-Level Certification (résumé attached). (<i>Employee must initial the box.</i>)
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2. TRAINING

Requirement: A minimum of 112 hours of competency training in the seven FAC-P/PM core competencies with performance outcomes.

<input type="checkbox"/>	I certify that I have met the training requirements for FAC-P/PM Mid-Level Certification. (<i>Employee must initial</i>)
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3. CONTINUOUS LEARNING

Requirement: A minimum of 80 continuous learning points (CLPs) every two years after the initial date of certification.

<input type="checkbox"/>	I certify that I have met the continuous learning requirements for FAC-P/PM Mid-Level Certification, if applicable. Documentation, including certificates of training and/or transcripts, must be attached to show completion of CLPs. (<i>Employee must initial the box</i>)
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4. COMPETENCIES

Requirement: Demonstrate proficiency in the seven FAC-P/PM core competencies for Mid-Level Certification as described below (employee included details on how each competency has been met are included below):

<input type="checkbox"/>	I certify that I have met the competency requirements for FAC-P/PM Mid-Level Certification. (<i>Employee must initial the box.</i>)
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(NEXT)

EPA Federal Acquisition Certification for Program/Project Manager (FAC-P/PM) - Mid Level

EPAAG 1.6.6-B

Competency 1. Requirements Development and Management Processes

Description:

Requirements development and management processes include: (1) knowledge of government-wide and agency-specific investment management requirements, filling gaps in capability needs, acquisition policies, and program management strategies that support assigned missions and functions; (2) understanding how to manage risk and the myriad of factors that influence cost, schedule, and performance; (3) attention to lessons learned; and (4) an understanding of the metrics needed to manage programs and projects that deliver quality, affordable, supportable, and effective systems/products.

Mid-Level Performance Outcomes:

- 1.2.1. Illustrate the criticality of user/mission requirements in performing project management functions.
- 1.2.2. Apply government and agency acquisition policies to meet user/mission requirements.
- 1.2.3. Relate how acquisition programs exist in size and scope along a continuum of increasing complexity, mission criticality, cost and level of control and oversight.
- 1.2.4. Discover the scope and purpose of systems acquisition management as an integration of the primary functions of: (1) requirements development and management; (2) systems engineering; (3) test and evaluation; (4) life-cycle logistics; (5) contracting; (6) business, cost estimating and financial management; and (7) leadership.
- 1.2.5. Formulate an Acquisition Strategy that incorporates risk mitigation strategies.
- 1.2.6. Clarify alternative concepts that efficiently meet mission capability gaps.
- 1.2.7. Determine requirements and assist in the planning for technology and business management throughout the acquisition process.
- 1.2.8. Prepare an Integrated Master Plan that reflects the tenets of total life cycle system management.
- 1.2.9. Assist in the development of an estimate of TOC in agency format.
- 1.2.10. Formulate the key features of a risk/opportunity management process.
- 1.2.11. Apply effective oral and written capabilities to communicate project needs and expectations.
- 1.2.12. Form and lead working groups as Integrated Project/Product Teams.
- 1.1.1. Recognize the applicable laws, statutes and regulations that control the Federal acquisition process.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-B

Competency 2. Systems Engineering

Description:

The recognition of scientific, management, engineering and technical skills used in the performance of system planning, research and development, with an emphasis on performing and managing technical processes as well as the technical management process itself. This includes knowledge of the nature of the requirements development process, decision analysis methods, technical assessment, configuration management, and interface management.

Mid-Level Performance Outcomes:

- 2.2.1. Apply quantitative and qualitative analytical techniques for decision making.
- 2.2.2. Justify and explain the benefits of using balanced and goal oriented performance measures in managing a system design effort.
- 2.2.3. Develop and demonstrate effective technical performance measures to monitor system performance.
- 2.2.4. Develop and apply a viable risk/opportunity management plan in the context of systems engineering (SE).
- 2.2.5. Administer and assess technical assessment plans and decision analysis methods.
- 2.2.6. Apply key technical management processes and tools used in the SE process, including: configuration management, technical performance measures, and technical design reviews.
- 2.2.7. Structure an effective requirements development and management process that traces engineering and technical specification requirements back to the user's system requirements.
- 2.2.8. Develop and apply a process for monitoring and selecting a balanced systems design solution.
- 2.2.9. Apply best practice processes for monitoring and selecting a systems design accounting for: environmental, safety and occupational health (ESOH); human factors; and security requirements.
- 2.2.10. Comprehend the systems life-cycle management concepts used for information technology (IT) systems.
- 2.2.11. Illustrate the main causes of software program problems.
- 2.2.12. Comprehend the major provisions of the Information Technology Management Reform (Clinger-Cohen) Act.
- 2.2.13. Compare and contrast the common software acquisition strategies and software development paradigms.
- 2.2.14. Recognize the best practices used in the Federal Government to improve efficiency and effectiveness of software acquisitions.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-B

Competency 3. Test and Evaluation

Description:

Knowledge of efficient and cost effective methods for planning, monitoring, conducting and evaluating tests of prototype, new or modified systems equipment or material, including the need to develop a thorough strategy to validate system performance through measurable methods that relate directly to requirements and to develop metrics that demonstrate system success or failure.

Mid-Level Performance Outcomes:

- 3.2.1. Select and apply efficient and cost effective methods for planning, monitoring, conducting, and evaluating tests of developmental, non-developmental, commercial or modified systems.
- 3.2.2. Comprehend the differences in type and scope of test and evaluation required for different program types, including commercial-off-the-shelf, non-developmental, and developmental programs.
- 3.2.3. Formulate the test and evaluation strategy for a program, accounting for the differences in hardware centric and information technology centric systems, that demonstrates system performance requirements and progressively reduces program risk.
- 3.1.1. Recognize the importance of test and evaluation to acquisition decisions.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-B

Competency 4. Life-Cycle Logistics

Description:

Knowledge of efficient and cost effective methods for planning, monitoring, conducting and evaluating tests of prototype, new or modified systems equipment or material, including the need to develop a thorough strategy to validate system performance through measurable methods that relate directly to requirements and to develop metrics that demonstrate system success or failure.

Mid-Level Performance Outcomes:

- 4.2.1. Express understanding of the concept of integrated product support, the product support elements and purpose of a product support plan.
 - 4.2.2. Comprehend performance-based logistic efforts that optimize total life cycle costs while maintaining system readiness.
 - 4.2.3. Recognize alternative logistics support practices, including supply chain management, best public sector and commercial practices and technology solutions, and their utility and appropriateness according to the type and scope of the acquisition program.
 - 4.2.4. Comprehend the concepts of availability, supportability, and reliability/maintainability while minimizing cost, the logistic footprint, and interoperability.
 - 4.2.5. Define interoperability as a key product support factor, along with examples of interoperability application.
 - 4.2.6. Assist in implementation of alternative logistics support practices.
 - 4.2.7. Recognize the importance of planning for the deployment of a new system or project.
- 4.1.1. Express understanding of the concept of integrated product support, the product support elements and purpose of a product support plan.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Mid Level**

EPAAG 1.6.6-B

Competency 5. Contracting

Description:

Knowledge of the supervision, leadership and management processes and procedures involving the procurement of capital assets, supplies and services, including construction, research and development, and science and engineering technical services as governed by the Federal Acquisition Regulation (FAR) and associated agency-specific additions to the FAR. Contracting involves acquisition planning to include: performance-based considerations; cost and price analysis; solicitation and selection of sources; preparation, negotiation and award of contracts; all phases of contract administration; termination options and processes for closeout of contracts; and legislation, policies, regulations, methods used and business and industry practices.

Mid-Level Performance Outcomes:

- 5.2.1. Examine the leadership and management processes associated with acquisition planning.
 - 5.2.2. Interpret the differences in business processes between industry and the Federal government as they relate to contracting.
 - 5.2.3. Correlate the relationship between the Acquisition Strategy and the Acquisition Plan.
 - 5.2.4. Formulate an Acquisition Strategy which includes a comprehensive contracting approach that incorporates risk mitigation strategies.
 - 5.2.5. Illustrate the basis for building and maintaining effective contract incentive relationships.
 - 5.2.6. Differentiate the key features of pre-award actions, contracting methods, and policy required by FAR.
 - 5.2.7. Conduct market research, including considerations for using non-developmental and commercial items, and incorporating socioeconomic considerations.
 - 5.2.8. Account for the factors that determine how commercial-off-the-shelf (COTS) products may affect a program during acquisition planning.
 - 5.2.9. Formulate the key features of a comprehensive program/project specification and SOW.
 - 5.2.10. Clarify source selection criteria including risk analysis methods, FAR Part 15/15.3.
 - 5.2.11. Apply and track contract administrative actions in collaboration with the program COR.
 - 5.2.12. Administer a negotiated baseline of performance with operational users, and the corresponding commercial and/or organic support providers.
 - 5.2.13. Assist the contracting officer in the negotiations with industry for the required level of contract performance.
 - 5.2.14. Demonstrate and apply the knowledge and skills required to perform the responsibilities of a COR.5.1.1.
- Contrast the roles and responsibilities between the contracting officer and the program manager.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-B

Competency 6. Business, Cost and Financial Management

Description:

Knowledge of the forms of cost estimating, cost analysis, reconciliation of cost estimating, government and industry financial planning, formulating financial projects and budgets, budget analysis/execution, cost-benefit analysis, Earned Value Management (EVM), business case analysis, and other methods of performance measurement.

Mid-Level Performance Outcomes:

- 6.2.1 Integrate the common forms of cost estimating and cost analysis into the formulation of financial programs and budgets, budget analysis and execution.
- 6.2.2. Apply the basic concepts of EVM, including cost and schedule program status indicators, and illustrate how EVM relates to managing program risk.
- 6.2.3. Formulate and use cost estimating processes, methods, techniques and analytical principles.
- 6.2.4. Employ techniques to adjust program strategies when EVM indicators indicate high risk or threaten a breach of a program threshold.
- 6.2.5. Assist in the preparation for, and participate in an Integrated Baseline Review (IBR) or similar review for performance measurement.
- 6.2.6. Track program compliance with applicable Federal and agency EVM policies and processes.
- 6.2.7. Analyze and allocate funds within the appropriation categories and correctly commit and obligate funds from each appropriation.
- 6.2.8. Apply and track the program according to applicable agency policy for financial planning, programming, budget development, budget execution, and OMB A-11 application.
- 6.2.9. Construct and present for evaluation a viable business case based on sound cost-benefit analysis, and containing both qualitative and quantitative decision criteria.
- 6.1.1 Comprehend the Congressional appropriation process, the various appropriation categories, and the rules for using the funds from each appropriation.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Mid Level**

EPAAG 1.6.6-B

Competency 7. Leadership

Description:

Leadership and professional acumen includes those attributes targeted toward leading and managing a multi-functional project team to satisfactory achievement of program goals, as well as influencing both horizontal and vertical stakeholder relations. Leaders take a long-term view and build a shared vision with others, acting as a catalyst for organizational change. Leaders influence others to translate vision into action and inspire team commitment, spirit, pride, and trust. Leaders develop networks and build alliances while collaborating across boundaries to build strategic relationships and achieve common goals. Leaders foster an inclusive workplace where diversity and individual differences are valued and leveraged to achieve the vision and mission of the organization. Leaders hold themselves and others accountable for measurable high-quality, timely, and cost-effective results.

Mid-Level Performance Outcomes:

- 7.2.1. Lead and facilitate an integrated project team (IPT) to satisfactory achievement of program/project goals.
- 7.2.2. Apply an effective communications approach that builds networks and fosters professional alliances.
- 7.2.3. Resolve interpersonal conflicts, grievances and confrontations to minimize negative personal and organizational impact.
- 7.2.4. Identify and effectively leverage the internal and external political environment that impacts the work of the organization.
- 7.2.5. Construct effective and timely decisions, adjusting for time-sensitive situations or when relevant information is limited.
- 7.2.6. Demonstrate the ability to develop new insights, question conventional approaches; encourage new ideas and innovations; and design and implement new or cutting edge plans and processes.
- 7.2.7. Foster the talent of others to perform by providing ongoing, effective feedback.
- 7.2.8. Persuade others to accept recommendations, cooperate or change their behavior, work with others towards an agreement, and negotiate to find mutually acceptable solutions.
- 7.2.9. Determine the impact that stakeholder relations have on programmatic success.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Mid Level**

EPAAG 1.6.6-B

PART C - SIGNATURES

Applicant:

By signing this form, I certify that I have met the certification requirements for FAC-P/PM Mid-Level Certification.

Name:		Signature:		Date:	
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Supervisor:

I recommend this applicant for FAC-P/PM Mid-Level Certification.

Name:		Signature:		Date:	
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Director:

I approve this applicant for FAC-P/PM Mid-Level Certification.

Name:		Signature:		Date:	
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**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Senior Level**

EPAAG 1.6.6-C

PART A - EMPLOYEE INFORMATION

Name (<i>Last, First, Middle Initial</i>):			
Email Address:			
Phone:		AAShip Name:	
Agency Address:			
Title, Series, Grade:		FAC P/PM Level:	Senior Level (3)

PART B - CERTIFICATION REQUIREMENTS

To obtain the FAC-P/PM Senior Level Certification, Program and Project Managers must meet the following requirements:

1. EXPERIENCE

Requirement: Four years of program or project management experience within the last ten years, which shall include a minimum of two years of experience on Federal programs as a federal government employee or as a contractor.

<input type="checkbox"/>	I certify that I have met the experience requirements for FAC-P/PM Senior Level Certification (résumé attached). (<i>Employee must initial the box.</i>)
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2. TRAINING

Requirement: A minimum of 120 hours of competency training in the seven FAC-P/PM core competencies with performance outcomes.

<input type="checkbox"/>	I certify that I have met the training requirements for FAC-P/PM Senior Level Certification. (<i>Employee must initial</i>)
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3. CONTINUOUS LEARNING

Requirement: A minimum of 80 continuous learning points (CLPs) every two years after the initial date of certification.

<input type="checkbox"/>	I certify that I have met the continuous learning requirements for FAC-P/PM Senior Level Certification, if applicable. Documentation, including certificates of training and/or transcripts, must be attached to show completion of CLPs. (<i>Employee must initial the box</i>)
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4. COMPETENCIES

Requirement: Demonstrate proficiency in the seven FAC-P/PM core competencies for Senior Level Certification as described below (employee included details on how each competency has been met are included below):

<input type="checkbox"/>	I certify that I have met the competency requirements for FAC-P/PM Senior Level Certification. (<i>Employee must initial the box.</i>)
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(NEXT)

EPAAG 1.6.6-C

Competency 1. Requirements Development and Management Processes

Description:

Requirements development and management processes include: (1) knowledge of government-wide and agency-specific investment management requirements, filling gaps in capability needs, acquisition policies, and program management strategies that support assigned missions and functions; (2) understanding how to manage risk and the myriad of factors that influence cost, schedule, and performance; (3) attention to lessons learned; and (4) an understanding of the metrics needed to manage programs and projects that deliver quality, affordable, supportable, and effective systems/products.

Senior-Level Performance Outcomes:

- 1.3.1. Manage the analyses of user requirements to optimize system performance relative to cost and schedule.
- 1.3.2. Facilitate the application of agency acquisition policies to meet user/mission requirements.
- 1.3.3. Evaluate the preparation and implementation of an Acquisition Strategy with an on-going risk/opportunity management process.
- 1.3.4. Identify, interpret and implement agency financial policies and directives that are applicable to the program.
- 1.3.5. Evaluate analysis of alternative concepts that efficiently meet mission capability gaps.
- 1.3.6. Facilitate the development of the program acquisition approach, define program scope, and coordinate an Integrated Master Plan.
- 1.3.7. Originate and manage an estimate of ownership cost ensuring consistency with OMB A-94 and PART analysis.
- 1.3.8. Construct, employ, and then modify based on changes in the acquisition environment, a risk/opportunity management process.
- 1.3.9. Manage the integration of business and technology management strategies, accounting for cost, schedule and performance risks, that delivers best value and meets capability requirements.
- 1.3.10. Design the charter and functions, select and assign membership, and lead integrated product/process teams and other program oriented working groups.
- 1.3.11. Synthesize the efforts and output of functionally oriented product/process teams in preparation for and execution of milestone and stakeholder reviews of the program.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

Competency 2. Systems Engineering

Description:

The recognition of scientific, management, engineering and technical skills used in the performance of system planning, research and development, with an emphasis on performing and managing technical processes as well as the technical management process itself. This includes knowledge of the nature of the requirements development process, decision analysis methods, technical assessment, configuration management, and interface management.

Senior-Level Performance Outcomes:

- 2.3.1. Formulate, implement and evolve a rigorous SE management program that tracks engineering and specification requirements back to user/mission requirements.
- 2.3.2. Evaluate technical management processes and tools used in the SE process, including configuration management, technical performance measures, and technical design reviews which ensure consistency of a product's attributes with its requirements and technical data information.
- 2.3.3. Evaluate and evolve the process of developing technical solutions which link user requirements to technical performance and lead to the selection of a balanced design solution.
- 2.3.4. Manage development and application of effective system performance measures that provide early indication the selected design solution will meet user requirements.
- 2.3.5. Generate and appraise common decision analysis methods and tools.
- 2.3.6. Assess and evolve products, plans and other documentation related to technical performance measurement, technical assessment, risk/opportunity management and technical data management.
- 2.3.7. Interpret and oversee program implementation of the provisions of the Information Technology Management Reform (Clinger-Cohen) Act.
- 2.3.8. Evaluate common SE management strategies for information technology programs.
- 2.3.9. Plan for the key processes employed in interface management, including the ability to trace system requirements through the software architecture.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

Competency 3. Test and Evaluation

Description:

EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Senior Level

EPAAG 1.6.6-C

Knowledge of efficient and cost effective methods for planning, monitoring, conducting and evaluating tests of prototype, new or modified systems equipment or material, including the need to develop a thorough strategy to validate system performance through measurable methods that relate directly to requirements and to develop metrics that demonstrate system success or failure.

Senior-Level Performance Outcomes:

3.3.1 Facilitate development of a comprehensive test and evaluation strategy, designed to reduce program risks as the program progresses through the acquisition life-cycle.

3.3.2 Justify and communicate to program stakeholders, efficient and cost effective methods for planning, monitoring, conducting, and evaluating tests of developmental, non-developmental, commercial or modified systems.

3.3.3 Oversee a comprehensive test and evaluation program, adjusting to changes in program complexity and risk.

3.3.4 Manage and critique a strategy for conducting user or operational testing that determines the operational effectiveness and suitability of a system under realistic operational conditions.

3.3.5 Manage the programmatic and system impact; and risk to program restructuring, as a result of analysis and evaluation of developmental and operational test reports.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-C

Competency 4. Life-Cycle Logistics

Description:

Knowledge of efficient and cost effective methods for planning, monitoring, conducting and evaluating tests of prototype, new or modified systems equipment or material, including the need to develop a thorough strategy to validate system performance through measurable methods that relate directly to requirements and to develop metrics that demonstrate system success or failure.

Senior-Level Performance Outcomes:

- 4.3.1. Evaluate and implement appropriate, innovative alternative logistics support practices that evolve to optimize life cycle costs, maintain system readiness and reduce logistics footprint.
- 4.3.2. Critique a product support strategy where interoperability is required and evolve the strategy to achieve a balance in system performance, system readiness and life-cycle cost.
- 4.3.3. Formulate and defend a performance-based logistics strategy that optimizes total system life cycle costs.
- 4.3.4. Synthesize logistic analysis results and risk mitigation issues early in the system development process and implement balanced adjustments in the system design to reduce the required support resources and overall life cycle costs.
- 4.3.5. Organize and track materiel management actions involving the coordination of production, inventory, location, and transportation of program items of materiel (and associated information and financial transactions) to achieve optimum readiness among organizations employing the system.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-C

Competency 5. Contracting

Description:

Knowledge of the supervision, leadership and management processes and procedures involving the procurement of capital assets, supplies and services, including construction, research and development, and science and engineering technical services as governed by the Federal Acquisition Regulation (FAR) and associated agency-specific additions to the FAR. Contracting involves acquisition planning to include: performance-based considerations; cost and price analysis; solicitation and selection of sources; preparation, negotiation and award of contracts; all phases of contract administration; termination options and processes for closeout of contracts; and legislation, policies, regulations, methods used and business and industry practices.

Senior-Level Performance Outcomes:

- 5.3.1. Adapt pre-award actions required by FAR considering contract terms and conditions.
- 5.3.2. Collaborate with the program contracting officer and orchestrate the source selection process commensurate with the complexity of the procurement.
- 5.3.3. Assess the coordination actions for the preparation of a comprehensive program specification and the Statement of Objectives (SOO), or SOW, or Performance Based Statement of Work (PSPW).
- 5.3.4. Manage the leadership and management processes associated with the integration of program planning and acquisition planning.
- 5.3.5. Develop and defend the overall strategy for managing the coordination and development of the acquisition and contracting strategy, including origination of the exit criteria for each acquisition phase as they apply to contracting.
- 5.3.6. Facilitate the contractual relationship with domestic and international buyers outside the agency which sponsors the program acquisition.
- 5.3.7. Construct and facilitate a negotiated baseline of performance between the operational users, and corresponding commercial and/or organic support providers.
- 5.3.8. Evaluate compliance with the application of Federal and agency acquisition policies to meet user/mission requirements when engaged in the acquisition of services.
- 5.3.9. Orchestrate the preparation, implementation and justification of a contracting approach within the Acquisition Strategy, along with an on-going risk management process for that approach.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-C

Competency 6. Business, Cost and Financial Management

Description:

Knowledge of the forms of cost estimating, cost analysis, reconciliation of cost estimating, government and industry financial planning, formulating financial projects and budgets, budget analysis/execution, cost-benefit analysis, Earned Value Management (EVM), business case analysis, and other methods of performance measurement.

Senior-Level Performance Outcomes:

- 6.3.1. Manage the application of Total Life Cycle Systems Management (TLCSM), or similar concept, which requires the program manager to base decisions on system-wide analyses and system performance and affordability, and manage the program risk of those decisions.
- 6.3.2. Oversee and facilitate program application of the common cost estimation techniques, applications, and their underlying analytical principles.
- 6.3.3. Evaluate program application of EVM, the criticality of the IBR or similar review process, and how to interpret the EVM indicators and resulting analysis.
- 6.3.4. Forecast the need for and direct financial planning exercises, and understand the risks associated with the formulated financial plans from those exercise.
- 6.3.5. Assess for merit a benefit-cost analysis, illustrating the strengths and weaknesses of associated analytical methods, and interpret the analysis results for a stakeholder review.
- 6.3.6. Manage the proper use of funds from each appropriation as well as interpret Appropriations law and the various appropriations categories.
- 6.3.7. Identify, apply and integrate agency financial policies and directives relevant to the program.
- 6.3.8. Evaluate relevance and make programmatic decisions based on analysis of business cases containing both qualitative and quantitative decision criteria.
- 6.1.6. Comprehend how to allocate funds within appropriation categories and how to use the funds from each appropriation.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

EPAAG 1.6.6-C

Competency 7. Leadership

Description:

Leadership and professional acumen includes those attributes targeted toward leading and managing a multi-functional project team to satisfactory achievement of program goals, as well as influencing both horizontal and vertical stakeholder relations. Leaders take a long-term view and build a shared vision with others, acting as a catalyst for organizational change. Leaders influence others to translate vision into action and inspire team commitment, spirit, pride, and trust. Leaders develop networks and build alliances while collaborating across boundaries to build strategic relationships and achieve common goals. Leaders foster an inclusive workplace where diversity and individual differences are valued and leveraged to achieve the vision and mission of the organization. Leaders hold themselves and others accountable for measurable high-quality, timely, and cost-effective results.

Senior-Level Performance Outcomes:

- 7.3.1. Identify, assess and resolve programmatic problems and use sound judgment to identify corrective courses of action.
- 7.3.2. Demonstrate a high level of responsibility and accountability for effective use of program resources.
- 7.3.3. Model well developed oral and written communications skills and foster their development in subordinates.
- 7.3.4. Facilitate an effective business partnership with the contracting officer, chief acquisition officer, senior-level agency advisors, other business advisers and program stakeholders.
- 7.3.5. Manage to a long-term organizational view that fosters a shared vision and acts as a catalyst for change.
- 7.3.6. Foster an inclusive workplace where diversity and individual difference are valued and leveraged to achieve the vision and mission of the organization.
- 7.3.7. Strategically position the organization to take advantage of new opportunities by developing or improving products or services.
- 7.3.8. Evaluate and remain current on local, national and international policies and trends that affect the organization and shape stakeholders' views.
- 7.3.9. Oversee the formulation of organizational objectives and priorities, and implement plans consistent with the long-term interests of the organization in a global environment.
- 7.3.10. Manage effective and timely stakeholder relationships that generate buy-in to the business and technical management approach to the program.

Training Documentation to Support Meeting Outcomes for Competency: *(Employee must provide a synopsis of the course (s) to gain knowledge, skills, and abilities to support competency outcomes. Be specific and detailed. Include training course titles and dates completed as appropriate. Attach supporting certificates of training and/or transcripts. Attached separate sheets if necessary.)*

**EPA Federal Acquisition Certification for
Program/Project Manager (FAC-P/PM) - Senior Level**

EPAAG 1.6.6-C

PART C - SIGNATURES

Applicant:

By signing this form, I certify that I have met the certification requirements for FAC-P/PM Senior Level Certification.

Name:		Signature:		Date:	
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Supervisor:

I recommend this applicant for FAC-P/PM Senior Level Certification.

Name:		Signature:		Date:	
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Director:

I approve this applicant for FAC-P/PM Senior Level Certification.

Name:		Signature:		Date:	
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**EPA Federal Acquisition Certification for
Request for FAC-P/PM Certification Date Extension**

EPAAG 1.6.6-D

MEMORANDUM

SUBJECT: Request Twelve Months FAC-P/PM Certification Date Extension

FROM: *(P/PM Supervisor)*

Through: *(Program Director)*

Through: *(Acquisition Career Manager)*

TO: *(Senior Procurement Executive)*

The Office of _____ is requesting a 12- month FAC-P/PM certification date for:

Name:

Position Title:

Series/Grade:

Position Description Summary:

Note: In the body of the memorandum address the following:

1. What is the condition prompting the extension request? The rationale should be mission related, budget related, or emergency (unusual and/or compelling).
2. Identify the specific FAC-P/PM level certification required and competency/competencies training /experience requirements the individual lacks.
3. Address the individual's ability to perform successfully in the position while working toward meeting the certification requirements (for example: provide mentoring, provide coaching, individual has prior experience, etc)
4. Provide a time-phased plan to meet the FAC- P/PM requirements. Indicate the date that the individual is expected to meet the FAC- P/PM requirements.
5. Include the supervisor's contact information



**EPA Federal Acquisition Certification for
Request for FAC-P/PM Certification Date Extension**

EPAAG 1.6.6-D

Acquisition Career Manager Action

☐ Recommended Approval

Comments:

☐ Recommended Disapproval

Comments:

Print Name _____

Signature: _____ Date _____

Senior Procurement Executive Action

☐ Approved

Comments:

☐ Disapproved

Comments:

Print Name _____

Signature: _____ Date _____



EPA Federal Acquisition Certification for Program/Project Manager-IT Core-Plus Specialization

EPAAG 1.6.6-E

PART A - EMPLOYEE INFORMATION

Name (Last, First, Middle Initial) _____
Email Address _____
Phone _____ AAShip Name _____
Agency Address _____
Title, Series, Grade _____ Check Level **(Mid-Level 2 _____); (Senior Level 3 _____)**

PART B – CERTIFICATION REQUIREMENTS

- Experience:** At least two years of program or project management experience supporting projects and/or programs within the given core-plus area is required to obtain the FAC-P/PM Core-Plus specialization certification. Core-plus experience may be included in the experience requirement for FAC-P/PM certification and documented on the resume. **(Resume Required)**
- Initial Training Requirements:** The FAC-P/PM-IT core-plus specialization certification will require a minimum of 32 hours of competency training, for mid-level and 40 hours of competency training for senior level. The training learning outcomes must be aligned to support the FAC-P/PM-IT core-plus specialization competencies and performance outcomes.
- Continuous Learning Requirements:** Eighty (80) CLP must be completed every two years after initial certification, including the requirement for 20 of the 80 CLPs dedicated to continuous learning in topics associated with the core-plus area.
- Competencies:**

1. ACCESSIBILITY

Performance Outcomes:

Select tools, equipment, and technologies used to assist individuals with disabilities to use computer equipment and software

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary.)

2. CONFIGURATION MANAGEMENT

Performance Outcomes:

Determine the principles and methods for planning or managing the implementation, update, or integration of information systems components

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary.)



EPA Federal Acquisition Certification for Program/Project Manager-IT Core-Plus Specialization

EPAAG 1.6.6-E

3. DATA MANAGEMENT

Performance Outcomes:

Operationalize the principles, procedures, and tools of data management, such as modeling techniques, data backup, data recovery, data dictionaries, data warehousing, data mining, data disposal, and data standardization processes.

Method(s) by which competency has been met:

Training Title &
Date Completed

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary.)

4. ENTERPRISE ARCHITECTURE

Performance Outcomes:

Comprehend the principles, concepts, and methods of enterprise architecture to align information technology (IT) strategy, plans, and systems with the mission, goals, structure, and processes of the organization.

Method(s) by which competency has been met:

Training Title &
Date Completed

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary.)

5. INFORMATION ASSURANCE

Performance Outcomes:

Apply methods and procedures to protect information systems and data by ensuring their availability, authentication, confidentiality, and integrity.



EPA Federal Acquisition Certification for Program/Project Manager-IT Core-Plus Specialization

EPAAG 1.6.6-E

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary.)

6. INFORMATION MANAGEMENT

Performance Outcomes:

Identify the need for and know where or how to gather information; organizes and maintains information residing on information management systems.

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary.)

7. INFORMATION RESOURCES STRATEGY AND PLANNING

Performance Outcomes:

Administer the principles, methods, and techniques of information technology (IT) assessment, planning, management, monitoring, and evaluation, such as IT baseline assessment, interagency functional analysis, contingency planning, and disaster recovery.

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary.)

8. INFORMATION SYSTEMS SECURITY CERTIFICATION

Performance Outcomes:



EPA Federal Acquisition Certification for Program/Project Manager-IT Core-Plus Specialization

EPAAG 1.6.6-E

Implement principles, methods, and tools for evaluating information systems security features against a set of specified security requirements. Includes developing certification and accreditation plans and procedures, documenting deficiencies, reporting corrective actions, and recommending changes to improve the security of information systems.

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)

9. INFORMATION SYSTEMS/NETWORK SECURITY

Performance Outcomes:

Demonstrate methods; select tools and procedures, including development of information security plans, to prevent information systems vulnerabilities and provide or restore security of information systems and network services.

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)

10. INFORMATION TECHNOLOGY ARCHITECTURE

Performance Outcomes:

Employ architectural methodologies in the design and development of information systems, including the physical structure of a system's internal operations and interactions with other systems.

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)

11. INFORMATION TECHNOLOGY PERFORMANCE ASSESSMENT

Performance Outcomes:

Select the principles, methods, and tools (for example, surveys, system performance measures) to assess the effectiveness and practicality of information technology systems.



EPA Federal Acquisition Certification for Program/Project Manager-IT Core-Plus Specialization

EPAAG 1.6.6-E

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)

12. Information Technology Program Management

Performance Outcomes:

Implement the principles, methods, and tools for the coordinated management of an IT program to include providing oversight of multiple IT projects, integrating dependent schedules and deliverables, and related activities (for example, benefits management, life cycle management, program governance).

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)

13. INFRASTRUCTURE DESIGN

Performance Outcomes:

Comprehend the architecture and typology of software, hardware, and networks, including LANS, WANS, and telecommunications systems, their components and associated protocols and standards, and how they operate and integrate with one another and with associated controlling software.

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)

14. OPERATIONS SUPPORT

Performance Outcomes:

Establish procedures to ensure production or delivery of products and services, including tools and mechanisms for distributing new or enhanced software.

Method(s) by which competency has been met:

**Training Title &
Date Completed**

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)



EPA Federal Acquisition Certification for Program/Project Manager-IT Core-Plus Specialization

EPAAG 1.6.6-E

15. TECHNOLOGY AWARENESS

Performance Outcomes:

Discover and implement new developments and applications of information technology (hardware, software, telecommunications), emerging technologies and their applications to business processes, and applications and implementation of information systems to meet organizational requirements.

Method(s) by which competency has been met:

Training Title &
Date Completed

Describe Demonstrated Knowledge, Skills, Abilities

(Insert supporting narrative/documentation. Be specific and detailed. Attached separate sheets if necessary)

PART C – SIGNATURES

Applicant's Signature _____ Date _____

Supervisor's Endorsement:

I recommend the above individual for certification at Level I.

Name _____ Signature _____ Date _____

Director Approval:

I approve the above individual for certification at Level I.

Name _____ Signature _____ Date _____

FEDERAL ACQUISITION INSTITUTE



Jeffrey Birch, *Director (acting)*

Aug 3, 2016

Mr. Mark Langley
Chief Executive Officer
Project Management Institute 14 Campus Boulevard
Newtown Square, PA 19073-3299

Dear Mr. Langley:

As a result of the Federal Acquisition Institute's (FAI) analyses, and collaboration with the Program and Project Management Functional Advisory Board, FAI establishes this letter of understanding with the Project Management Institute (PMI) outlining competency alignment, training equivalency, and continuous learning (CL) credit for the PMI credentials per the listed matrix below. This competency alignment and CL credit comply with: (1) the certification training standards contained in the Office of Federal Procurement Policy memorandum: "Revisions to the Federal Acquisition Certification for Program and Project Managers (FAC-P/PM)", dated December 16, 2013; and (2) the FAC-P/PM Core Competency Model, version 2.1, dated September 26, 2013.

A current PMI credential may be used as a one-time acquisition workforce system credit as authorized by each agency Acquisition Career Manager (ACM).

PMI Credential	FAC-P/PM Entry-Level		FAC-P/PM Mid-Level		FAC-P/PM Senior-Level		Continuous Learning
CAPM	N/A		N/A		N/A		24 hours; one time FAITAS entry*
PMP	Meets all Business, Cost and Financial Management training requirements	or	Meets all Business, Cost and Financial Management training requirements	or	Meets all Business, Cost and Financial Management training requirements	or	40 hours; one time FAITAS entry*

*ACM may award additional CL credit for classes taken over the minimum PMI requirement.

Further, individuals pursuing or renewing PMI credentials who have completed training toward the FAC-P/PM certification, or have attained the FAC-P/PM certification, may submit evidence to PMI of such training or certification, subject to PMI review, toward meeting the education requirements of the initial or recertification of the applicable PMI credential.

FEDERAL
ACQUISITION
INSTITUTE



Jeffrey Birch, *Director (acting)*

Letter of Understanding between FAI and PMI, August 3, 2016 (continued)

This letter replaces the previous letter of understanding dated July 2009 between FAI and PMI regarding the relationship of the FAC-P/PM certification and PMI credentials. FAI looks forward to working together with PMI to better serve the Federal acquisition professional.

Sincerely,

Jeffrey Birch
Director (acting)
Federal Acquisition Institute

Section 1.7 – Determinations and Findings

Subsection 1.7.1 - EPA Class Determinations/Approvals (December 2019)

This subsection was previously Unit 1.5 of the Acquisition Handbook.

1.7.1.1 Purpose.

This purpose of this subsection is to provide official copies of EPA Class Determinations and approvals.

1.7.1.2 Background [Reserved].

1.7.1.3 Authority/Applicability.

Determinations and approvals are required when requesting individual or class deviations to FAR and EPAAR prescriptions and clauses. The authority for class determinations is FAR Subpart 1.703, Class Determinations and Findings. Approvals must be obtained in accordance with EPA policy in Subsection 1.6.1 of the EPA Acquisition Guide.

1.7.1.4 Definitions *(see each individual class determination/approval).*

1.7.1.5 Policy *(see each individual class determination/approval).*

(a) Copies of EPA Class Determinations/Approvals

(1) Class JOFOC for Acts of Terrorism

U.S. ENVIRONMENTAL PROTECTION AGENCY

CLASS JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION FOR REQUIREMENTS RESULTING FROM THREATS AND ACTS INVOLVING BIOLOGICAL, CHEMICAL, RADIOLOGICAL, AND OTHER FORMS OF TERRORISM

In light of recent developments and events involving terrorist acts and threats directed at the United States, and the potential for future incidences of such acts and threats, the EPA needs to be in a position to be able to adequately, completely, and timely respond to any emergencies precipitated by such acts and threats. Such acts and threats may emanate from biological, chemical, radiological, and other forms of terrorism and terrorist actions. If such emergencies materialize, they will present an immediate and urgent threat to the public health and welfare and the environment, and the EPA needs to be able to respond to such emergencies. To respond to such emergencies, EPA may need to obtain contractor support on an urgent and compelling, and noncompetitive, basis to meet the need presented by the situation in order to allow the agency to meet its responsibilities and mitigate the threat to the public health, welfare and the environment.

This action is justifiable because the need for the services/supplies will be of such an unusual and compelling urgency that the Government, the public health, and the environment would be seriously injured unless the Agency is permitted to limit the number of sources from which it solicits bids or proposals to deal with these acute emergency circumstances.

Accordingly, based on the information set forth below, and pursuant to the authority of 41 U.S.C. 253(c)(2) and subparagraph 6.302-2 of the Federal Acquisition Regulation (FAR), the supplies/services described below may be acquired without full and open competition on the basis that these requirements are of such unusual and compelling urgency that any delay in procurement would result in immediate and serious injury to the Government.

Justification

1. As an integral player in this nation's response to acts and threats of terrorism involving the use of, and threat of use of, chemicals, biological agents, nuclear weapons, and other forms of terrorism, including radiological contamination, the EPA must be in a position to be able to adequately, completely, and timely respond to these acts and threats to protect the public health and welfare and the environment. Because of their nature, and as evidenced by the events relating to anthrax exposures, these terrorist attacks and threats will require immediate action to protect the public health and welfare and the environment. Furthermore, the urgent and compelling circumstances attendant to this risk stem from the concern that terrorist acts and threats may materialize suddenly and unexpectedly because there is no way to predict with certainty when and where they will occur. This uncertainty creates the potential that there may not be any existing contractual support available for the Agency to utilize, in the time needed, to address the situation when it does materialize thereby exposing the public and the environment to the risk of harm and danger.

Accordingly, in order to be able to meet its responsibilities to the public and the environment, the EPA needs to have the ability to obtain on other than a full and open competitive basis immediate supplies/services to respond to acts and threats involving chemical, biological, radiological and other forms of terrorism. Such supplies/services that may be needed to respond and provide support in connection with these efforts include but are not limited to: rescue/recovery efforts; air, ground, and water monitoring/sampling for numerous types of contaminants in both the affected and outlying areas to forestall any additional contamination; identification of the extent of contamination; site remediation and decontamination activities; analytical laboratory services; personal protective equipment; and environmental removals and cleanup.

2. These supplies/services will be needed to enable the Agency to provide support in connection with efforts to respond to acts and threats of terrorism as set forth above. Because the nature and extent of any specific future incidences involving terrorist acts and threats that may precipitate the use of the authority provided by this Class JOFOC cannot be predicted or known in advance, and in order to be circumspect in the use of this Class JOFOC, the authority provided under this Class JOFOC cannot be used until such time as the Procurement Executive of the agency, or her designee, determines that a particular act or event justifies the use of the authority of this Class JOFOC.

3. When such events and emergencies involving terrorist acts and threats occur, the EPA will work in concert with city, state, and other federal and regional organizations as appropriately required to provide support for the emergency effort to protect the environment in the affected and outlying areas, and the public health of both rescue and recovery personnel, area workers, and residents.

4. In the event of new terrorist acts and threats, there will be critical and immediate needs for unanticipated supplies and services required to protect the environment and the public health. Some examples of the types of terrorist activities that would result in such an emergency include but are not limited to:

- a. A fire or explosion occurring at a chemical manufacturing plant or distribution center that could release chemicals into the air, water, or land endangering the public, and the environment;
- b. The release of biological agents into the air, water, or land, such as a release of anthrax through the U.S. mail system which ultimately contaminated various facilities within the U.S. and has endangered the public's health and environment;
- c. The partial or complete destruction of a nuclear facility that would release radioactive particles and waste into the air, water, and land endangering life and the environment; and
- d. The release of chemical or biological agents which contaminate agricultural lands, water, air, livestock, and other related agricultural products that endangers the public and environment.

When an act or threat of terrorism occurs, the Agency must be able to quickly deploy contractor personnel to assess the presence and levels of contamination. If the Agency were unable to provide sufficient and timely response and analytical services within the rapid response environment, it could endanger (e.g. exposure to inhalation and cutaneous anthrax) the health and safety of rescue and government employees working at these sites, and the general public that may have been exposed to these sites, or items, materials etc., that may have been contaminated in conjunction with the event at these sites. In addition, slow or delayed response to these situations may contribute to the continued and accelerated spread of the contaminated agents, e.g. biological, chemical, etc., causing greater damage to the environment and to the public, possibly resulting in death.

5. The Agency shall request offers for the supplies or services to be acquired pursuant to this Class JOFOC from as many sources as are practicable under the circumstances to meet the requirements for delivery/performance in time to meet the immediate needs of emergency efforts. However, if circumstances dictate, the Agency may award a sole source contract if there is only one source that can deliver these supplies or perform these services in time to meet the immediate needs of the Agency's emergency efforts. Moreover, in addition to, and

notwithstanding the authority provided under this Class Justification, the Notice to Proceed contracting procedures contained in the EPAAR are available for use to the extent applicable.

6. The contracting officer need not submit the notice required for synopsis of proposed contract actions required by FAR 5.201 when utilizing this exception provided under FAR 6.302-2. The exception for FAR 5.201 is FAR 5.202(a)(2), and the Agency's mission would be seriously impaired if the Agency complied with the time periods specified in FAR 5.203.

7. Contracting actions pursuant to this Class JOFOC may not be taken prior to the determination made by the Procurement Executive, or her designee, referenced in paragraph 2 above. Once such a determination has been made, the contracting officer will ensure that each contract action taken pursuant to the authority of this Class Justification is within the scope of the Class Justification and shall document the contract file for each contract action accordingly. Each contract action taken pursuant to this Class Justification will identify the name and location of the vendor, the supplies/services to be acquired under the contract, and the location(s) where the services will be performed or supplies delivered. In addition, the contracting officer for each action will determine that the anticipated cost to the Government for the action will be fair and reasonable and document the file accordingly and will demonstrate that the contractor selected for the action is qualified to perform it.

8. Because the nature and extent of any future need for supplies and services covered by this Class Justification cannot be definitively predicted in advance of when they occur, and what they will be, a contractor will need to be selected immediately and a synopsis will not be issued, nor will market research be conducted.

9. This JOFOC is effective for one year from the date of approval and the need to re-issue a new JOFOC for similar emergency requirements will be re-evaluated upon expiration so as to limit the amount of time these non-competitive procedures are authorized.

10. The warranted authority of the individual Contracting Officer shall constitute the dollar limitation for actions under this Class Justification for other than full and open competition.

11. This Class Justification is accurate and complete to the best of my knowledge and belief.

Approval

Based on the information above and 41 U.S.C. 253(c)(2), and in accordance with subparagraph 6.302-2 and 5.202(a)(2) of the Federal Acquisition Regulation, the supplies/services described above may be acquired without full and open competition and without synopsis, since these requirements are of such unusual and compelling urgency that any delay in procurement would result in the immediate and serious injury to the United States.

/S/ _____
 , Director
 Office of Emergency and Response
 Office of Solid Waste and Emergency Response

 Date

CONCUR:

_____/S/_____
, Agency Advocate for Competition
Office of Acquisition Solution

Date

APPROVAL OF SENIOR PROCUREMENT EXECUTIVE:

_____/S/_____
, Senior Procurement Executive and Director
Office of Acquisition Solutions

Date

(2) Determinations and Findings for Defense Against or Recovery from Terrorism or Nuclear, Biological, Chemical, or Radiological Attack

**U.S. ENVIRONMENTAL PROTECTION AGENCY
CLASS JUSTIFICATION
FOR OTHER THAN FULL AND OPEN COMPETITION
FOR REQUIREMENTS RESULTING FROM THREATS AND ACTS
INVOLVING BIOLOGICAL, CHEMICAL, RADIOLOGICAL,
AND OTHER FORMS OF TERRORISM**

1. In light of recent developments and events involving terrorist acts and threats directed at the United States, and the potential for future incidences of such acts and threats, EPA must be in a position to respond quickly and completely to any emergencies precipitated by such acts and threats. If such emergencies materialize, they will present an immediate and urgent threat to the public health and welfare and the environment and will necessitate an immediate response from EPA. Likewise, EPA, in partnership with other Federal agencies, or under the cognizance of other Federal agencies, may be called upon to support recovery efforts. In either role, EPA will need to obtain contractor support on an urgent and compelling, and non-competitive basis to meet the immediate need and to fulfill the Agency's responsibility to mitigate any threat to the public health, welfare, and environment. This justification for other than full and open competition is therefore necessary because the need for the services/supplies will be of such an unusual and compelling urgency that the Government, the public health, and the environment would be seriously injured unless the Agency is permitted to limit the number of sources from which it solicits bids or proposals for emergency supplies and services.

2. Because of their nature, threats from biological, chemical, and radiological agents and other forms of terrorism directed against the United States require immediate response action to protect the public health and welfare and the environment. Furthermore, the urgent and compelling circumstances attendant to terrorist acts and threats may materialize suddenly and unexpectedly because there is no way to predict, with certainty, when and where acts and threats of terrorism will occur, and the extent of damage it may cause. Consequently, there may be a lack of pre-existing contractual support that can be utilized in a timely fashion.

3. Accordingly, and in order to meet its responsibilities to the public and the environment, EPA must have the ability to obtain, on other than a full and open competitive basis, immediate supplies and services to sufficiently respond to acts and threats of terrorism. Such supplies/services that EPA may need to respond include but are not limited to: rescue and recovery services; air, ground, and water monitoring/sampling for numerous types of contaminants in both the affected and outlying areas to forestall any additional contamination; identification of the extent of contamination; site remediation and decontamination activities; analytical laboratory services; personal protective equipment; environmental removals and cleanup; and information technology supplies and services.

4. When a terrorist act or threat occurs, the Agency must be able to quickly deploy contractor personnel to assess the presence and levels of contamination. If the Agency were unable to provide sufficient and timely response and analytical services within the rapid response environment, it could endanger the health and safety of rescue and Government employees working at these sites. In addition, slow or delayed response to these situations may contribute to the continued and accelerated spread of contamination, thereby causing greater damage to the environment and to the public health and possibly resulting in deaths.

5. Because the nature and extent of any future terrorist acts and threats is unknown, the use of the authority provided by this Class JOFOC cannot be predicted or known in advance. Therefore, in order to ensure that the authorities in this Class JOFOC are used judiciously, the Procurement Executive of the Agency, or her designee, must make an affirmative determination that a particular act or event qualifies for coverage before the Class JOFOC may be used.

6. The Agency shall request offers for the supplies or services to be acquired pursuant to this Class JOFOC from as many sources as practicable under the circumstances to meet the requirements for delivery/performance. However, if circumstances dictate, the Agency may award a sole source contract if there is only one source that can deliver the requisite supplies or perform the requisite services in time to meet the immediate needs of the Agency. Likewise, the Agency may extend existing contracts under this JOFOC. In addition to the authority provided under this Class Justification, the Notice to Proceed contracting procedures contained in the EPAAR are available for use to the extent applicable.

7. The contracting officer need not submit the notice required for synopsis of proposed contract actions required by FAR 5.201 when utilizing this exception provided under FAR 6.302-2. Likewise, market research to identify sources need not be conducted.

8. Contracting actions pursuant to this Class JOFOC may not be taken prior to the determination made by the Procurement Executive, or her designee, referenced in paragraph 5, above. Once such a determination has been made, the contracting officer will ensure that each contract action taken pursuant to the authority of this Class Justification is within the scope of the Class Justification and shall document the contract file for each contract action, accordingly. Each contract action taken pursuant to this Class Justification will identify the name and location of the vendor, the supplies/services to be acquired under the contract, and the location(s) where the services will be performed or supplies delivered. In addition, the contracting officer for each action will determine that the anticipated cost to the Government for the action will be fair and reasonable and will demonstrate that the contractor selected for the action is qualified to perform. File documentation must evidence that the contracting officer has made these determinations.

9. The warranted authority of the individual contracting officer shall constitute the dollar limitation for actions under this Class Justification.

10. This Class Justification will remain in effect until superseded or canceled.

APPROVAL

Based on the information above and 41 U.S.C. 253(c)(2), and in accordance with subparagraph 6.302-2 and 5.202(a)(2) of the Federal Acquisition Regulation, the supplies and services required for terrorism response activities may be acquired without full and open competition and without synopsis, because the aforementioned requirements are of such an unusual and compelling urgency that any delay in procurement would result in immediate and significant harm to the public health and welfare, and the environment.

CONCUR:

_____/S/
 , Agency Advocate for Competition
 Office of Acquisition Solutions

 Date

APPROVAL OF SENIOR PROCUREMENT EXECUTIVE:

_____/S/
 , Senior Procurement Executive and Director
 Office of Acquisition Solutions

 Date

CHAPTER 3 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Section 3.1 - Safeguards

Subsection 3.1.1 - Safeguarding Confidential Business Information (TBD)

This subsection was previously Unit 3.1 of the Acquisition Handbook.

3.1.1.1 Purpose.

The purpose of this subsection is to advise EPA employees who handle confidential business information (CBI) of their responsibilities, and to set forth a requirement to notify CBI owners and those receiving CBI who should not, when unauthorized CBI is released.

3.1.1.2 Background.

Safeguarding CBI is a mission-critical requirement for all EPA employees who handle CBI. Deliberate or inadvertent disclosure of CBI can have serious consequences; e.g., there are possibilities of damage claims against the Agency, and penalties for EPA employees who make unauthorized CBI disclosures.

3.1.1.3 Authority/Applicability.

Federal agencies are required to protect CBI. The EPA CBI regulations are contained in 40 C.F.R. Part 2, Subpart B. Specific procedures for protecting CBI may also be contained in statutory-based program manuals (e.g., the Toxic Substances Control Act, the Clean Water Act). See also the EPA Information Security Manual, Section 13.0, Security Plans at <http://intranet.epa.gov/rmpolicy/ads/manuals/Manual.PDF>

3.1.1.4 Definitions.

Confidential business information – CBI includes trade secrets, proprietary, commercial, financial, and other information that is afforded protection from disclosure under certain circumstances as described in statutes administered by the Agency. Business information is entitled to confidential treatment if: (1) business asserts a confidentiality claim; (2) business shows it has taken its own measures to protect the information; (3) the information is not publicly available; or (4) disclosure is not required by statute and the disclosure would either cause competitive harm or impair the Agency's ability to obtain necessary information in the future. Examples include TSCA and FIFRA information, information from the Contracts Payment System, and “proprietary information” ([19 U.S.C. 1677f\(b\)](#)). (CBI defined in [EPA Information Security Manual](#).)

Source selection information – Federal Acquisition Regulation (FAR) 2.101 defines

source selection information (SSI) as confidential business information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

1. Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening;
2. Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices;
3. Source selection plans;
4. Technical evaluation plans;
5. Technical evaluations or proposals;
6. Cost or price evaluations of proposals;
7. Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract;
8. Rankings of bids, proposals, or competitors;
9. Reports and evaluations of source selection panels, boards, or advisory councils; and
10. Other information marked as "Source Selection Information".

3.1.1.5 Policy.

In the event CBI is disclosed to an unauthorized recipient or inappropriately disclosed, EPA employees who handle CBI, such as COs, CSs and Technical Evaluators, shall take immediate remedial action.

3.1.1.5.1 Procedures

(a) Details of the unauthorized CBI disclosure must be immediately provided to the Office of Acquisition Solutions (OAS) Information Security Officer in the Information Technology Service Center, and to the Office of General Counsel (OGC) or the relevant Office of Regional Counsel.

(b) After consulting with the appropriate authorities described above, contracting officers (CO) shall provide notice in accordance with the applicable security manual or, if such a manual does not exist, immediate oral and written notification

1. to the owner of the CBI, informing the owner of the unauthorized disclosure.
2. to the parties to whom the CBI was unauthorized disclosed. This notification should be made orally and in writing and request the parties return the CBI to EPA and provide confirmation that any digital copies of the material has been permanently deleted in order to prevent further disclosure.

(c) All above actions shall take place within one business day of the discovery of the improper disclosure.

(d) The CO who receives or obtains information about a violation or possible violation of the Procurement Integrity Act (See [FAR 3.104-3](#)), must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor (see [FAR 3.104-7](#)).

1. If the CO concludes that there is no impact on the procurement, the CO must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to OGC for review and the Chief of the Contracting Office (CCO) for approval. Both OGC and the CCO must concur. If they concur, the CO may proceed with the procurement.
2. If they do not concur or the CO determines there may be an impact, the information and documentation must be immediately forwarded to the Head of the Contracting Activity (HCA), after review by OGC and the CCO. The CO must withhold award, if the contract has not yet been awarded.
3. Whether the contract has already been awarded or not, the HCA may direct the CO as to the appropriate action.

(e) If you have any questions regarding the control and protection of CBI and/or SSI, please contact the OAS Information Security Officer or the Acquisition Policy and Training Branch.

EPAAG

Chapter 4 - Administrative Matters

Section 4.5 – Electronic Commerce in Contracting

Subsection 4.5.1 – Use of EAS and Electronic/Digital Signatures (December 2019)

4.5.1.1 Purpose.

This subsection:

- (a) Requires that the EPA Acquisition System (EAS) contract writing program be used by EPA acquisition personnel;
- (b) Requires that contracting officers (COs) and contract specialists (CSs) use the EAS electronic signature functionality for documents signed in EAS;
- (c) Authorizes use of the digital signature available on employee EPA Personnel Access and Security System (EPASS) badges;
- (d) Requires that COs and CSs use the “Acquisition Checklist form 1900-70” folder template in EAS for non-Simplified Acquisition Procedures (SAP) procurements;
- (e) Requires that COs and CSs use the Form 1900-70 “SAP Checklist” folder template in EAS for Simplified Acquisitions; and
- (f) Allows electronic routing for review and approval in EAS to serve as the official electronic signature for COs/CSs and other reviewers for official contract documents.

4.5.1.2 Background.

(a) As permitted by Federal Acquisition Regulation (FAR) 4.502(d) and 15 U.S.C. § 7001, COs and other reviewers are not required to physically sign a paper document in order for it to be considered an official contract document. EAS has the functionality for COs to (1) sign documents using its electronic signature functionality, and (2) collect digitized approvals (e.g., signatures) electronically through the system’s review and approval routing process. Although EAS does not affix an electronic image of a reviewer’s signature to a document or file in the same way it affixes the CO’s signature to an award form, EAS does record the reviewer’s actions in the system’s route history. This process meets the electronic signature guidance that the Office of Management and Budget (OMB) provided to agencies in support of the implementation of the Government Paperwork Elimination Act (GPEA).

(b) Because current Office of Acquisition Solutions (OAS) policy states that the paper copy of the contract file is the official file copy, COs and other reviewers have been required to sign paper copies of official contract documents (e.g., Determination and Findings (D&Fs), Justifications and Approvals (J&As)). EPA Acquisition Guide (EPAAG) Subsection 4.5.2, *FedConnect Use in EAS*, provides that, in addition to the paper copy of the contract being the official file copy, COs shall also maintain electronic files (including signed copies of contract documents) in EAS. While the paper file continues to be the official contract file, electronic copies of documentation must also be stored in EAS after March 12, 2014. This duplication of maintenance of the paper and electronic file in order to satisfy both filing requirements has resulted in COs and other reviewers spending time collecting signatures on paper copies of contract documents, then uploading those signed copies to EAS as PDF documents.

(c) In March 2014 Form 1900-70 *EPA Acquisition Checklist*, was updated with various types of supporting documents that can be included as part of a contract file. In June 2017 a SAP version of the Form 1900-70 was also created. As part of EAS 7.2 functionality, a “folder template” functionality was added that will automatically preload a “checklist” folder template into new contract actions depending on which of the two versions is selected. The preloaded checklists will enable COs and CSs to save electronic copies of supporting documents in the appropriate sections of the acquisition checklist folder templates in EAS.

4.5.1.3 Authority/Applicability.

This subsection is issued in accordance with FAR 1.301(a) and 1.401(f), GPEA, ESIGN, and EPA Delegations Manual Chapter 1-2.

4.5.1.4 Definitions [Reserved].

4.5.1.5 Policy.

(a) (i) Effective September 29, 2015, EPA acquisition personnel shall use EAS, and EAS shall be the only contract writing program, for all contract actions, including contracts, CO/CS purchase card transactions, purchase orders, delivery orders and task orders, BPA call orders, work assignments (for existing contracts that have work assignments), and Technical Direction Documents. EAS award documents shall be signed electronically and a manual signature is not required.

(ii) All pre- and post-award contract documentation required in accordance with FAR 4.803 shall be maintained in electronic form and shall reside in EAS, except for any documents required by regulation to be maintained in paper copy. It is the Agency’s long-term strategy for the Enterprise Content Management System (ECMS) to become the official contract file, and to that end EAS and ECMS will interface at a later date. While the paper file continues to be the official

contract file, electronic copies of documentation must also be stored in EAS after March 12, 2014. This will enable EAS to be more rapidly integrated with ECMS in the future, at which time the paper file will no longer be required.

(b) COs and CSs must use the EAS electronic signature functionality for documents signed in EAS.

(c) (i) COs and CSs may use an EPASS badge digital signature for documents signed outside of EAS (e.g., determination and findings, offeror/contractor correspondence). This authorization does not broadly apply to all documents sent to other agencies (e.g., Certificates of Competency requests sent to the Small Business Administration) because not all agencies accept digital signatures. COs and CSs may use digital signatures on a case-by-case basis if the other agency accepts it.

(ii) Detailed instructions for imparting the digital signature from the EPASS badge are located in the EAS document library for Adobe Professional users and Adobe Reader users. Adobe Professional users should “lock” the document after the last digital signature is affixed so that no further editing can occur.

(iii) EPASS badges older than 2013 or 2014 may not include the digital signature certification. OAS users who possess EPASS badges that do not include the digital signature certification should contact their Procurement Operation Division (POD)/Regional security office in order to obtain a new badge that includes the certification.

(d) For all new contract actions, COs and CSs must use one of the two preloaded EAS Form 1900-70 “Acquisition Checklist” folder templates for filing supporting contract documents. Standardizing the EAS folder templates to mirror the non-SAP and SAP versions of the EPA Form 1900-70 will facilitate stored document review for third parties (e.g., auditors).

(e) The review and approval routing process in EAS may serve as the official electronic signature for COs and other reviewers on official contract documents. When using the e-signature functionality, or review and approval routing process in EAS to obtain electronic digitized approvals (e.g., signatures), COs must ensure a hardcopy record of the e-signature or complete routing history in EAS (as applicable) is printed and placed in the paper contract file until such time that paper copies of contract files are no longer required.

(f) All digital signature users and EAS users are advised that using the digital signature or EAS e-signature functionality, or reviewing or approving a document or file in EAS, is tantamount to placing a physical “pen-and-ink” signature and date on the document or file. Approvers will continue to have the option to disapprove any document or file in EAS that is routed to them for approval.

(g) If the CO or approver cannot sign electronically in EAS, or cannot review or approve a document or file in EAS or with digital signature, then the CO must continue to upload ink-signed copies of official contract documents in PDF format to EAS as necessary.

4.5.1.6 Contracting Officer Requirements

(a) COs and CSs must use EAS for all contract actions, including contracts, CO/CS purchase card transactions, purchase orders, delivery orders and task orders, BPA call orders, work assignments (for existing contracts that have work assignments), and Technical Direction Documents.

(b) COs and CSs must use the EAS e-signature functionality when signing official contract documents in EAS, and may use digital signatures for documents signed outside of EAS.

(c) For all contract actions, COs and CSs must use one of the two preloaded EAS Form 1900-70 “Acquisition Checklist” folder templates for filing supporting contract documents. The EAS Hot Tip that was issued in April 2015 entitled, *“Using the New ‘Acquisition Checklist’ in Supporting Documents”* provides detailed usage directions and screen shots for the non-SAP checklist and is located on the OAS intranet [here](#).

(d) The following guidance is provided to COs using the electronic route history in EAS to obtain electronic signatures:

(1) The CO should prepare official contract documents that require review and/or approval without a physical signature block. In lieu of a signature block, the document should include a statement substantially the same as: “This document requires approval by [*list required approver or their proxy*]. Approval of this document will be obtained as electronic signature through the review and approval routing process in EAS.”

(2) The CO will upload documents that require review or approval to the Supporting Documents section of their file.

(3) Contract documents routed for electronic signature in EAS should be in final draft only. The CO may obtain comments and edits on documents from reviewers through EAS or through an outside electronic medium, such as sharing draft versions through email.

(4) Once a document is uploaded, the CO may route that individual document to the next reviewer for review or approval. (Documents requiring “concurrence” should be routed for review.)

(5) As an alternate procedure, the CO may upload all documents requiring review or approval to EAS and route the entire file to the next reviewer for review or approval. Reviewers are advised to be mindful that if they are reviewing a file routed to them in EAS, they are reviewing or approving all documents contained in the file.

(6) EAS will notify the reviewer that a document is awaiting their review/approval in EAS.

(7) If the document was routed for approval, the reviewer will analyze the document and may choose one of two options: "Mark as Approved" or "Mark as Disapproved."

(8) If selecting "Mark as Approved," the reviewer should provide comments substantially the same as "I approve this document."

(9) If selecting "Mark as Disapproved," the reviewer should provide comments substantially the same as "I disapprove this document for the following reasons: *[list reviewer comments]*."

(10) If the document was routed for review, the reviewer will analyze the document but may only choose one option: "Mark as Reviewed."

(11) If finding the document acceptable, the reviewer should provide comments substantially the same as "I have reviewed this document and find it acceptable."

(12) If finding the document unacceptable, the reviewer should provide comments substantially the same as "I have reviewed this document and find it unacceptable for the following reasons: *[list reviewer comments]*."

(13) If the CO receives disapproval or unacceptable review, the CO must correct the deficiencies in the document and re-route to the reviewer for their review/approval before proceeding.

(14) When the CO receives approval or acceptable review, the CO may proceed to route the document to the next reviewer or, for final approvals, may proceed to the next step in the acquisition.

(15) EAS provides a proxy option that allows a user to assign an individual to review or approve documents routed to the user while the user is away from the office. Assigning a proxy will prevent documents from becoming stalled in EAS in the user's absence.

To assign a proxy in EAS:

(i) Click the Assign Proxy button in the Blue Toolbar.

(ii) Click the Lookup button in the User ID field to select a User Name.

[The User Name and Email fields will display automatically based on the user that is selected.]

(iii) Click the Calendar icon in the Start Date field.

(iv) Click the Calendar icon in the End Date field.

(v) Click the Submit to save your proxy.

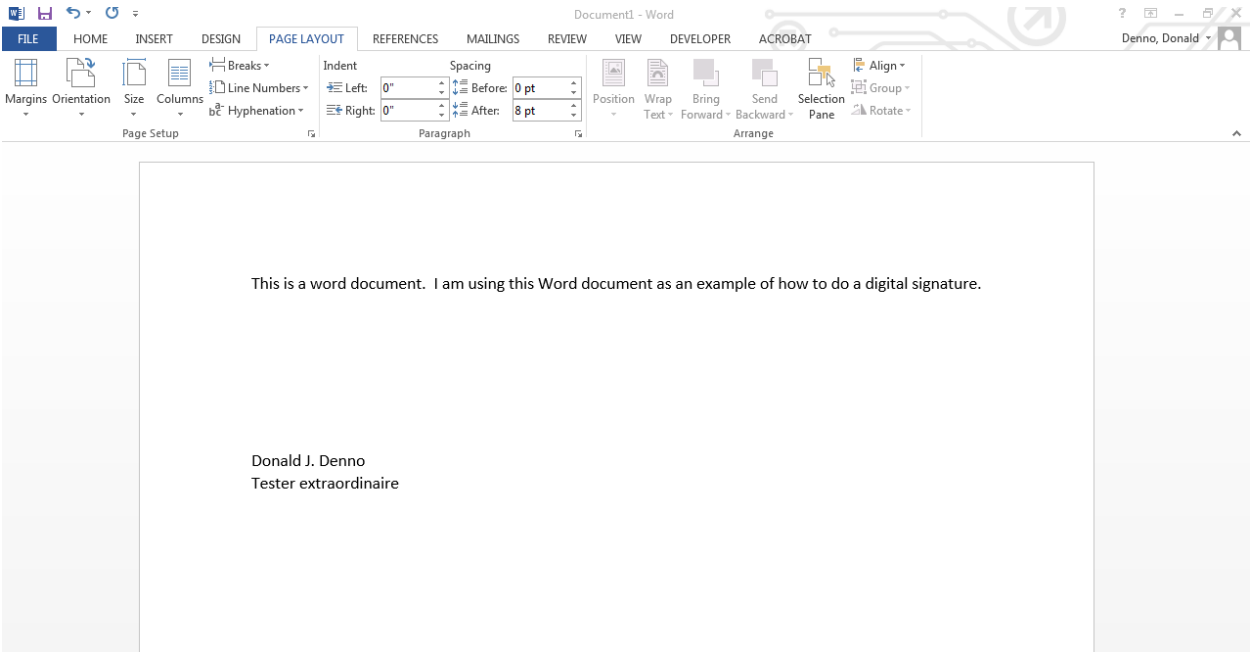
4.5.1.7 EAS Filing Times for Documents Created Outside of EAS

The following procurement actions have three-day EAS filing time requirements:

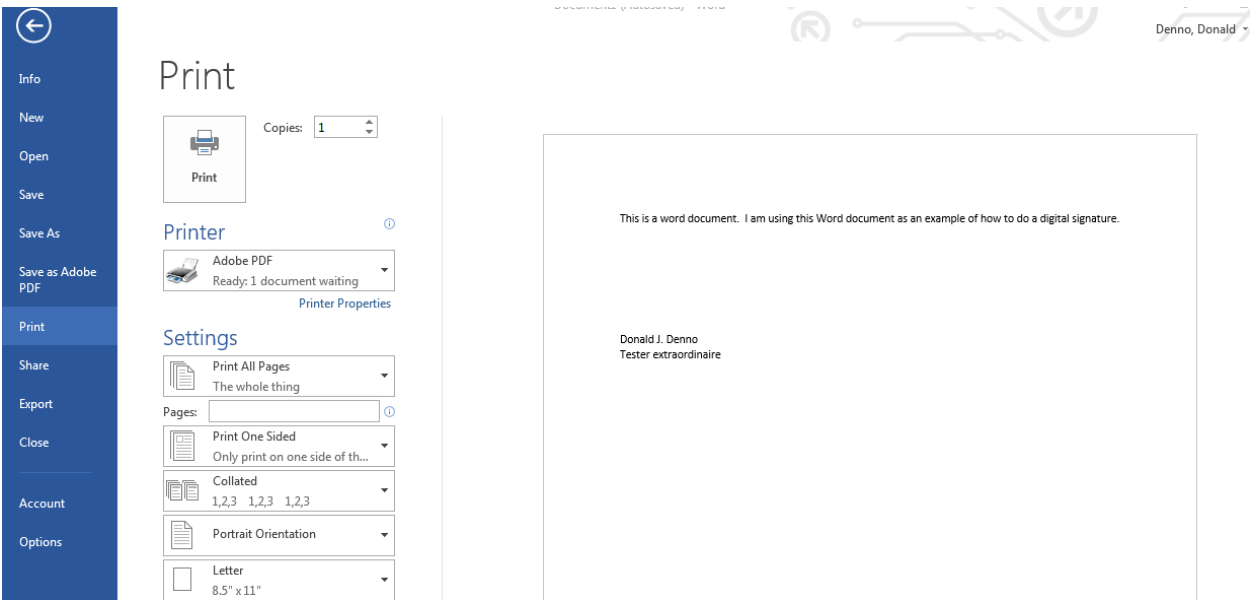
- (a) For oral solicitations conducted in accordance with FAR 13.106-1(c), electronic copies of procurement action documentation (e.g., source selection) shall be added to the EAS award file within three working days of documentation signature.
- (b) For requirements purchased through GSA's electronic request for quote (RFQ) system *e-Buy*, electronic copies of the RFQ, quotes and other interactions that are in *e-Buy* shall be added to the EAS award file within three working days of receipt of transmitted RFQ, quote or other interaction.
- (c) For requirements purchased through the *GSA Reverse Auctions* eTool platform, or *FedBid*, electronic copies of the solicitation, bids and other interactions that are in *GSA Reverse Auctions* or *FedBid* shall be added to the EAS award file within three working days of receipt of transmitted solicitation, bid or other interaction.
- (d) For requirements purchased through a Government-Wide Acquisition Contract (GWAC) electronic RFQ system (e.g., NASA's SEWP IV for IT products, NIH's NITAAC for IT procurements) electronic copies of the solicitation, bids and other interactions that utilized the GWAC electronic RFQ system shall be added to the EAS award file within three working days of receipt of transmitted solicitation, bid or other interaction.
- (e) For requirements where commercial practice prohibits the ability to utilize FedConnect to obtain quotes or proposals (e.g., micropurchase software subscriptions where the commercial practice is to enter data into the vendor system to generate a quote), electronic copies of the quote and other interactions shall be added to the EAS award file within three working days of receipt of transmitted quote or other interaction.
- (f) For requirements below the simplified acquisition threshold (SAT) where the contracting officer does not have a reasonable expectation of receiving offers through FedConnect, electronic copies of the quote and other interactions shall be added to the EAS award file within three working days of receipt of transmitted quote or other interaction.

Subsection 4.5.1 – Use of EAS and Electronic/Digital Signatures
Attachment A – How to Affix a Digital Signature using Adobe Professional

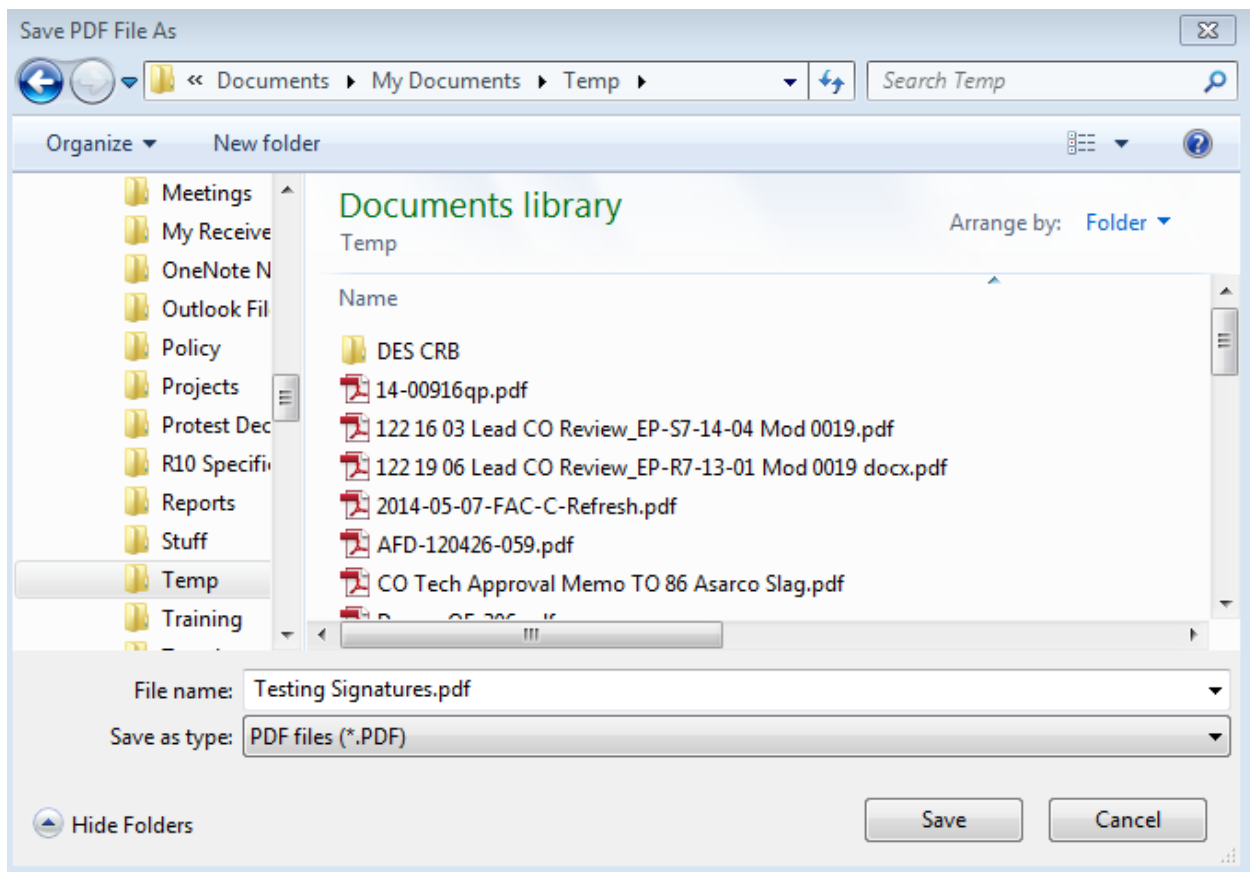
(1) Create the Word document.



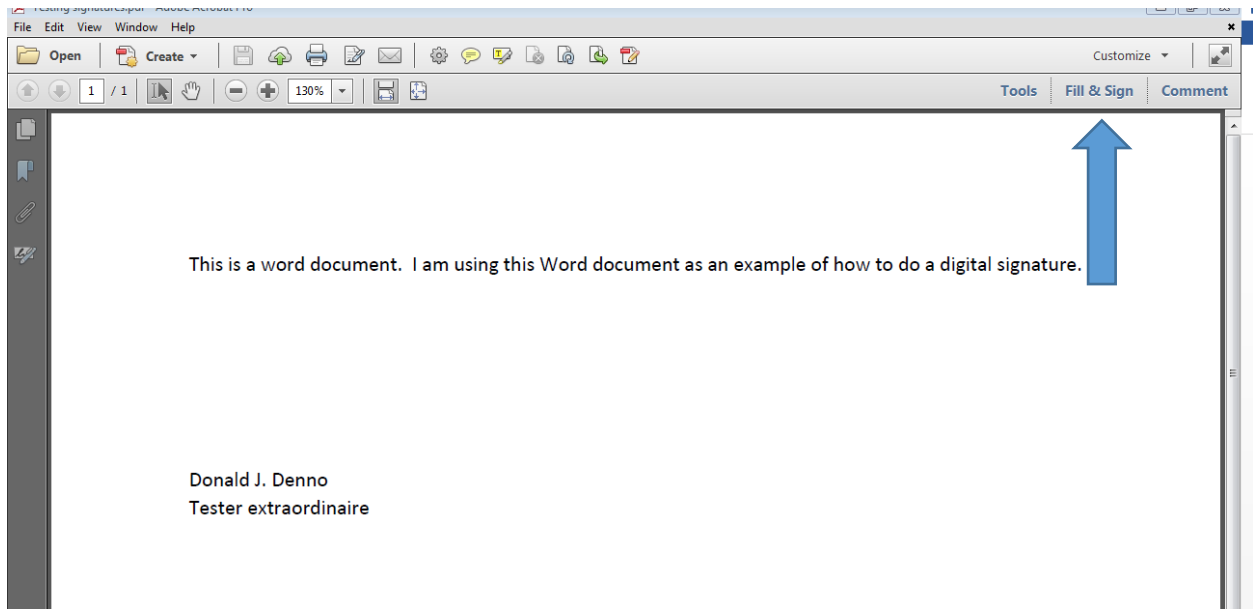
(2) Print the Word document to a pdf.



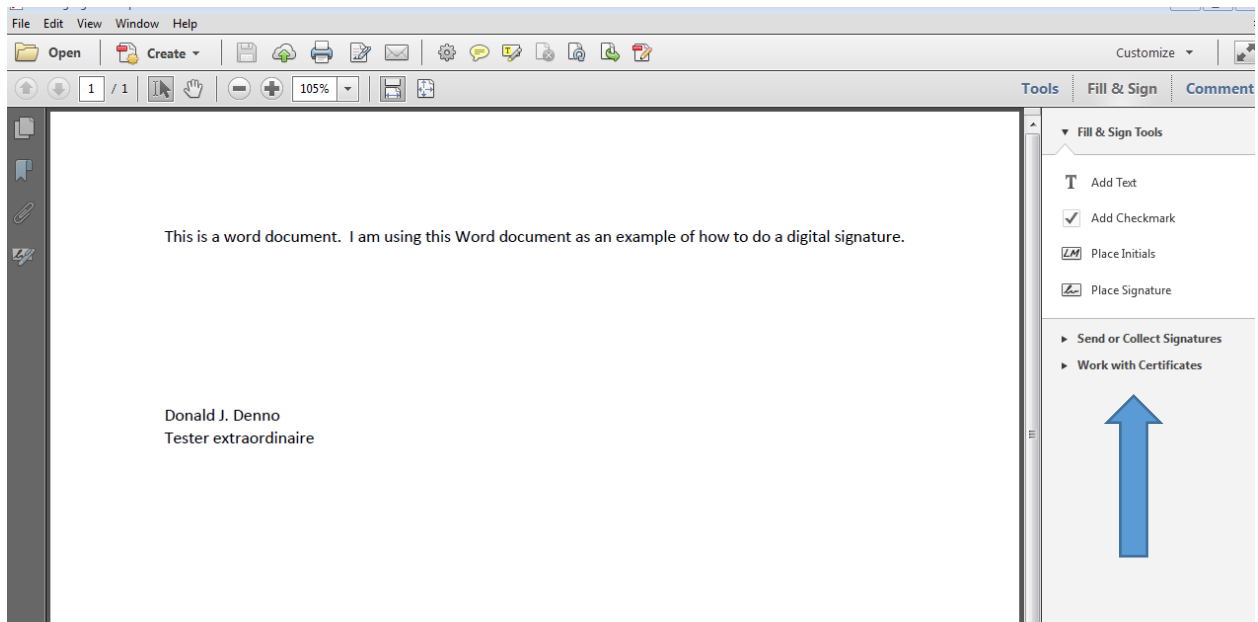
(3) Name the document.



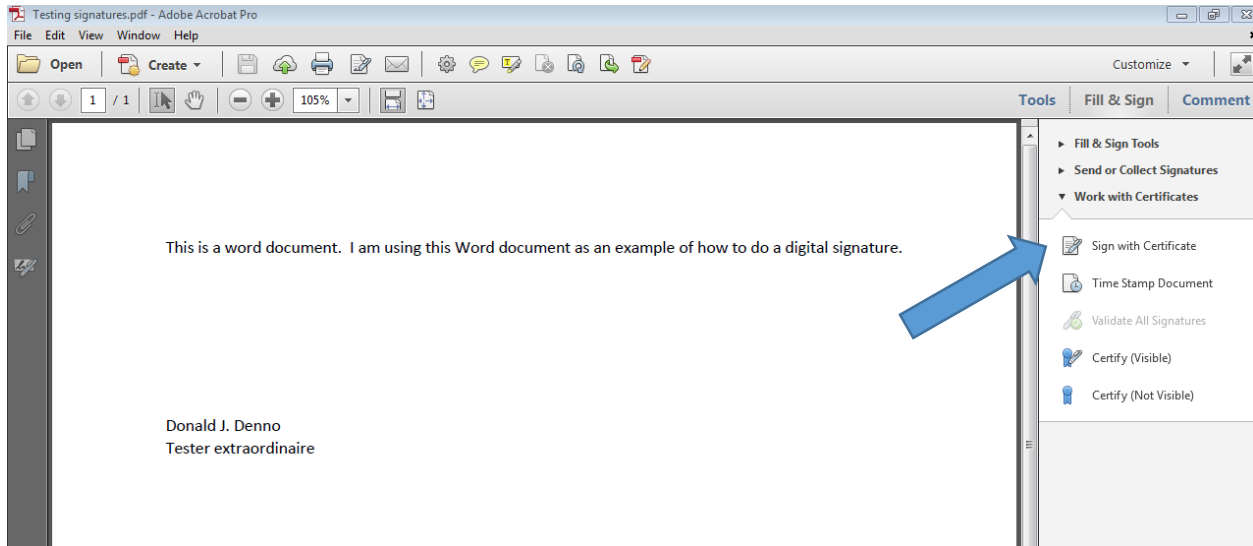
(4) In Adobe Pro, click on “Fill & Sign” on the upper right side of the program.



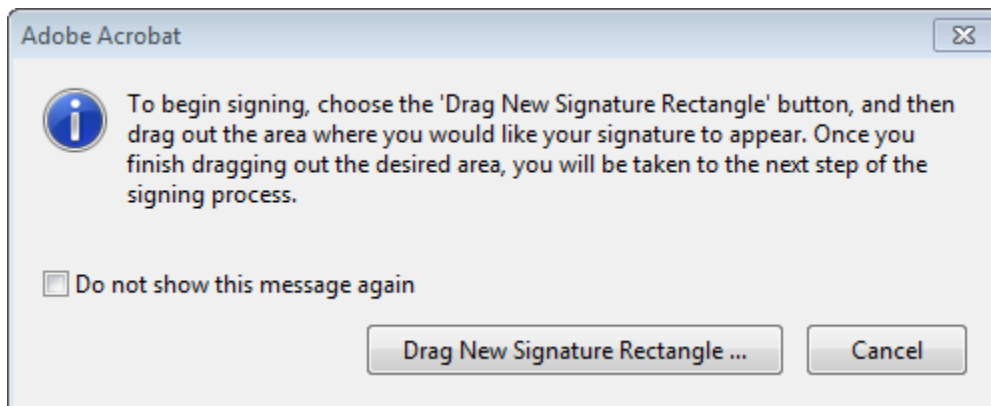
(5) Click on “Work with Certificates.”



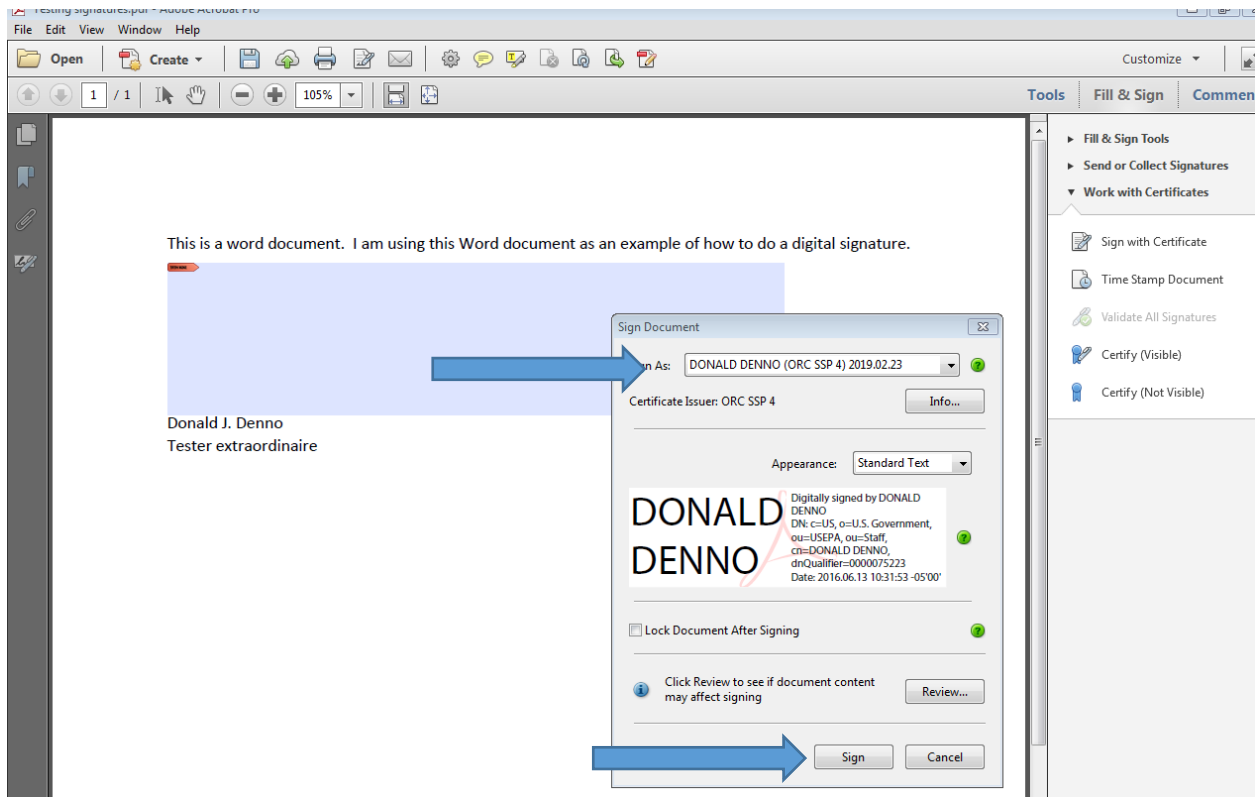
(6) Insert your EPASS card in your computer and click on “Sign with Certificate.”



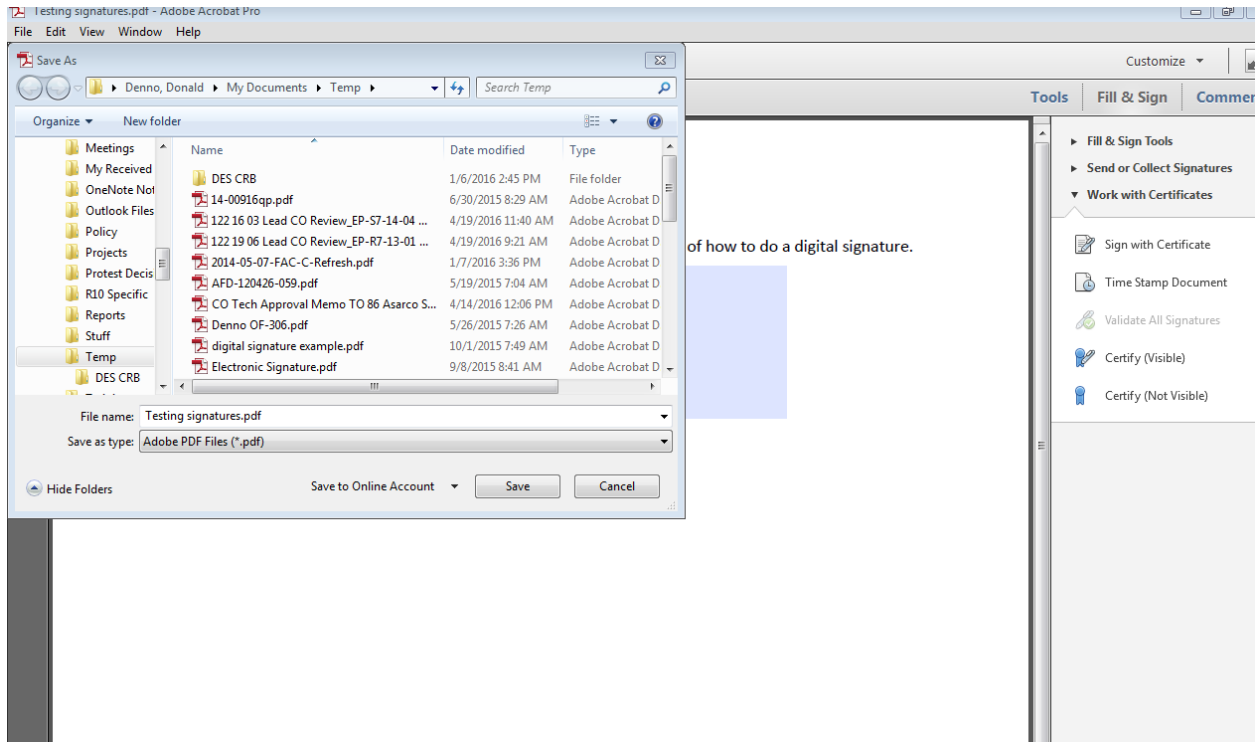
(7) When the message below pops up, read and click “Draw New Signature Rectangle...”



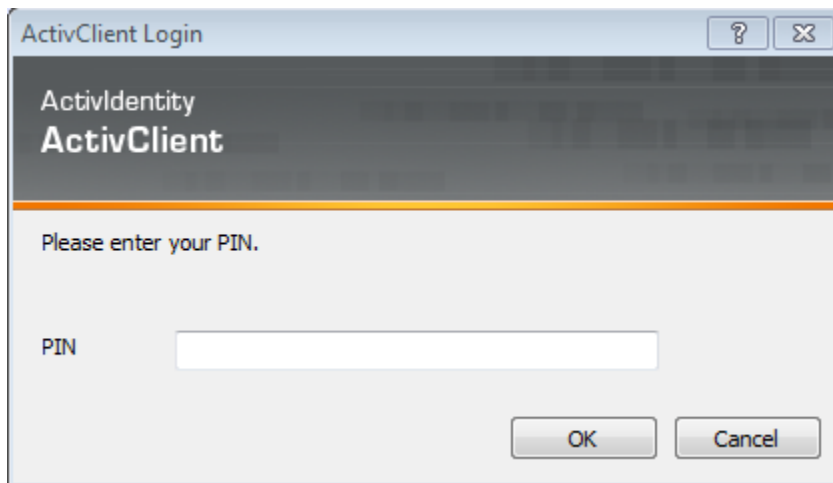
(8) Use your mouse to draw a box where you want the signature to appear. Once you let go of the mouse button, a popup window will appear. Select the appropriate certificate (*should be the second ORC SSP 4 choice with the most recent date*) and click “Sign”



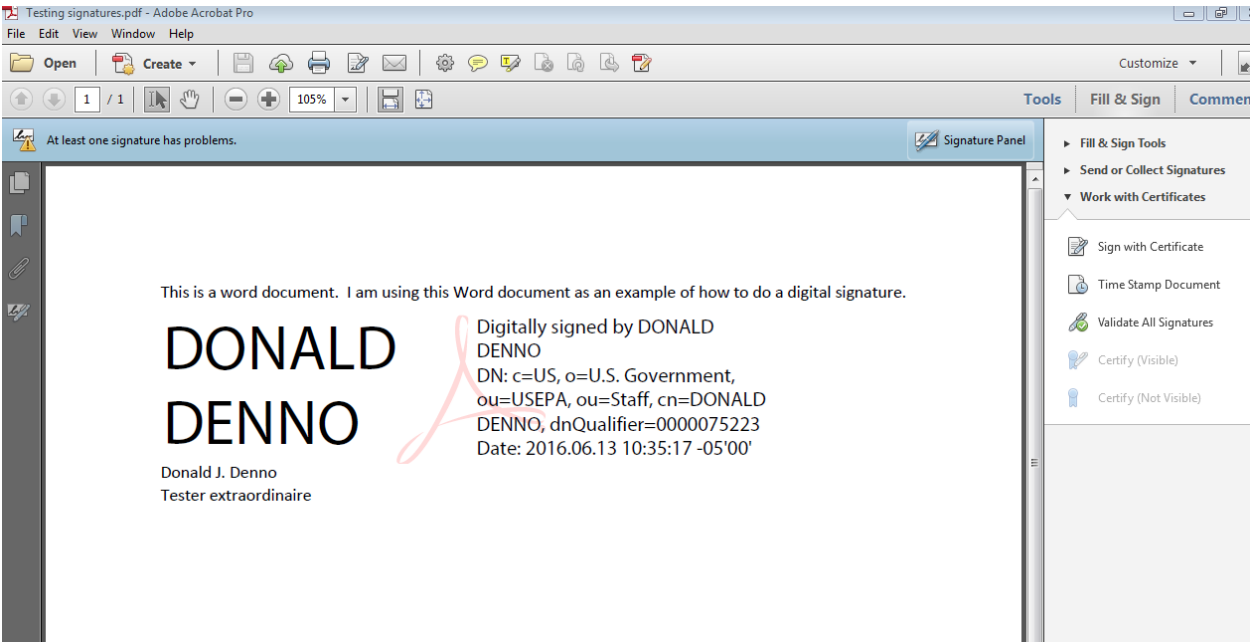
(9) A window will appear that will allow you to save the document again. You can either save with the same name (a confirmation window will appear) or give the document a new name.



(10) This pop-up will appear and you will enter your EPASS PIN and click OK.



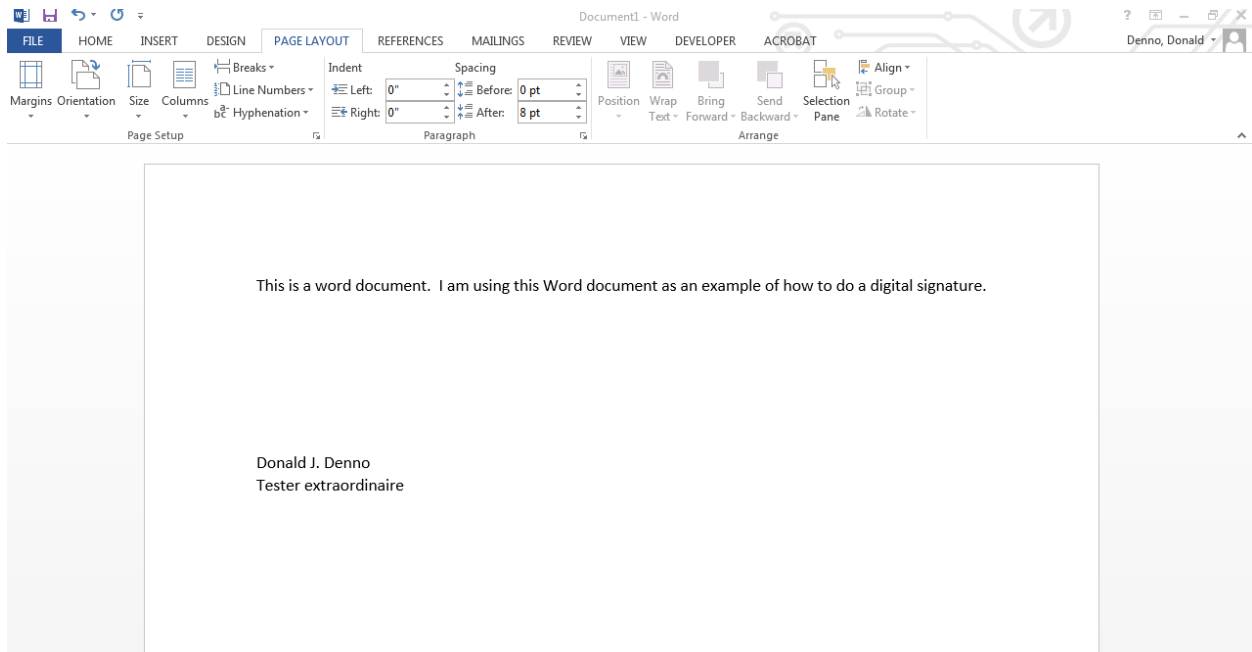
(11) Your document will now appear with your digital signature affixed; see cheeky sample below.



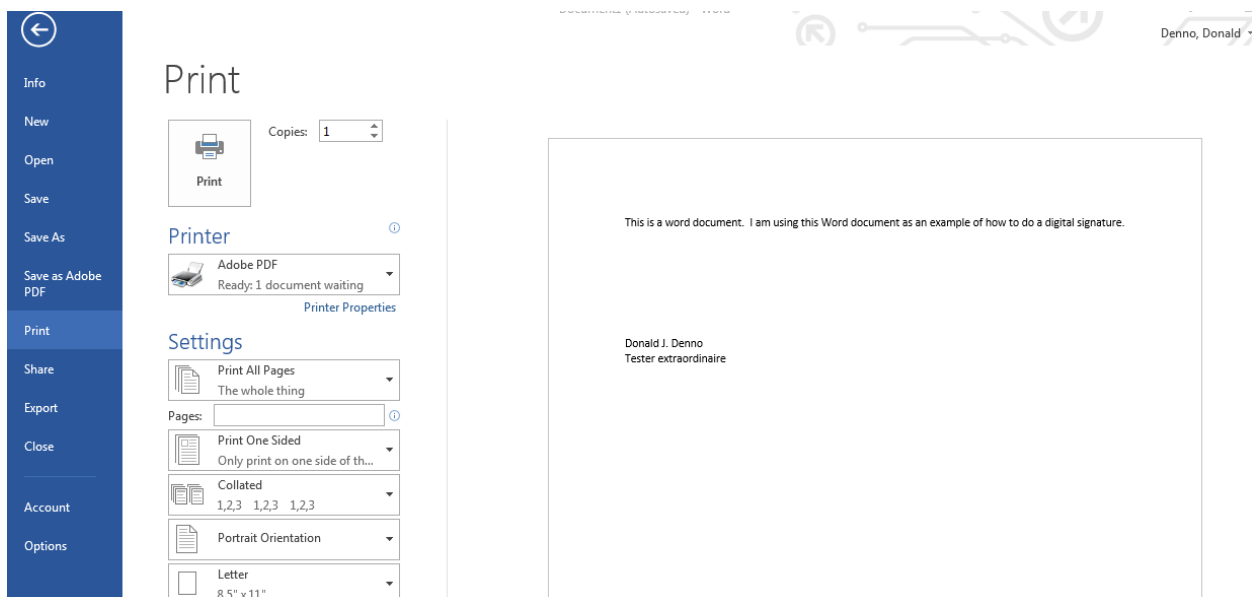
Subsection 4.5.1 – Use of EAS and Electronic/Digital Signatures

Attachment B – How to Affix a Digital Signature using Adobe Reader

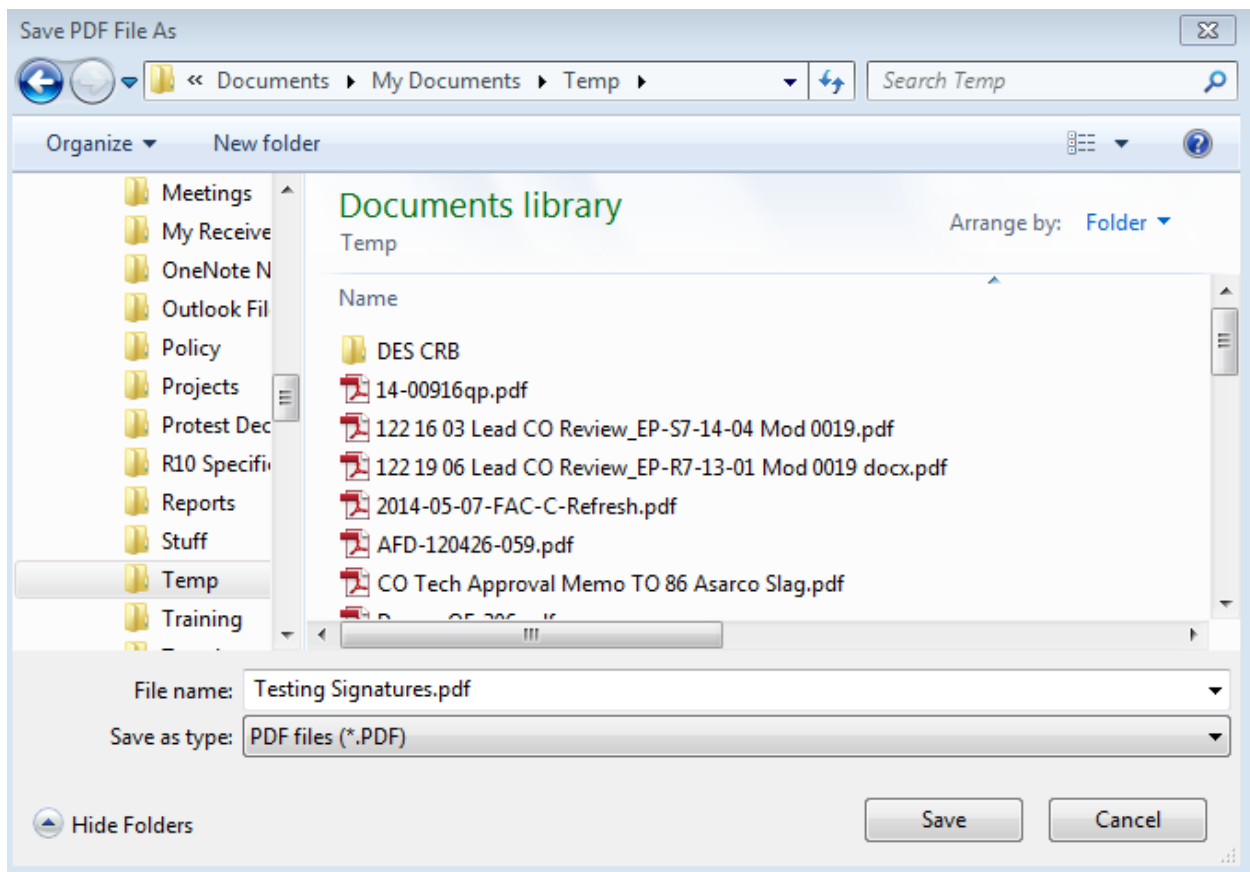
(1) Create the Word document.



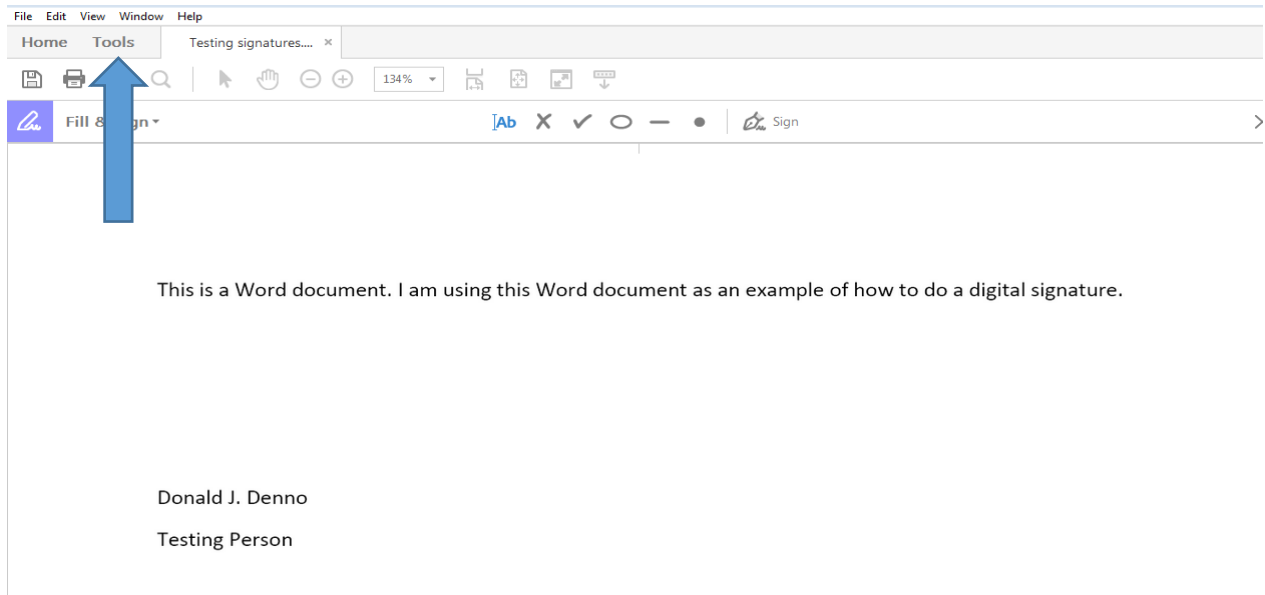
(2) Print the Word document to a pdf.



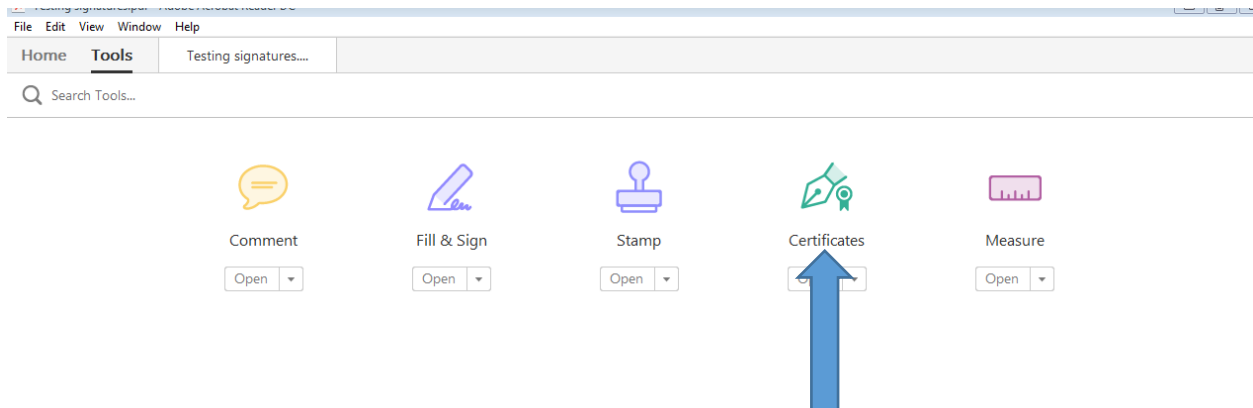
(3) Name the document.



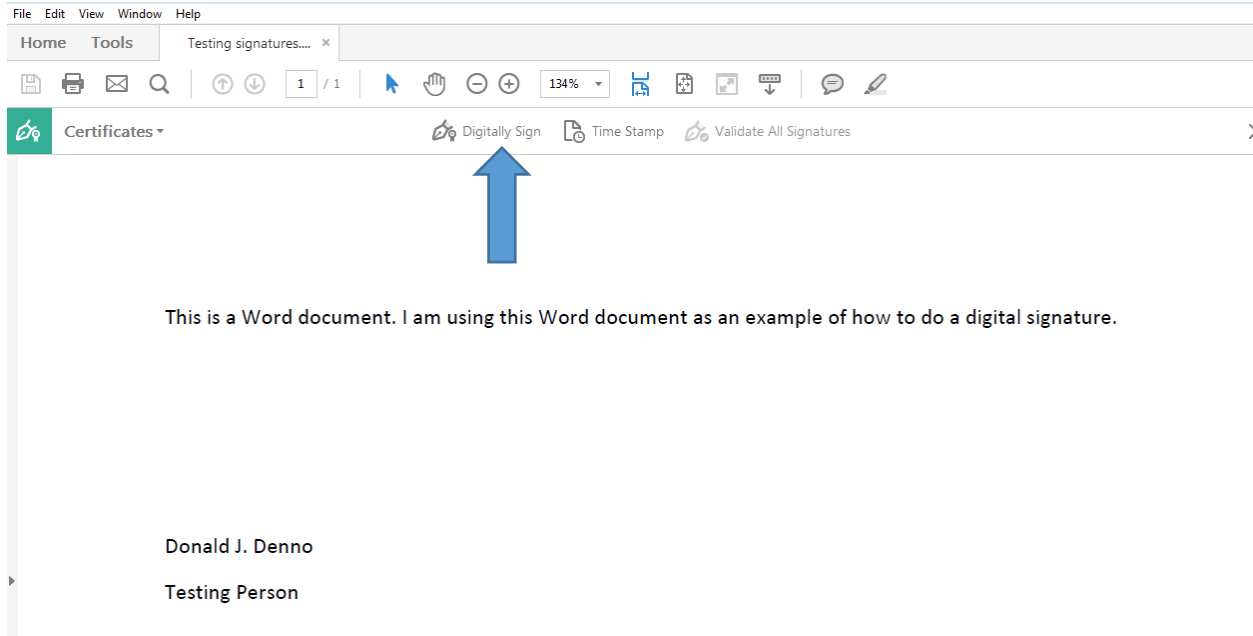
(4) In Adobe Reader, click on “Tools” on the upper left side of the program.



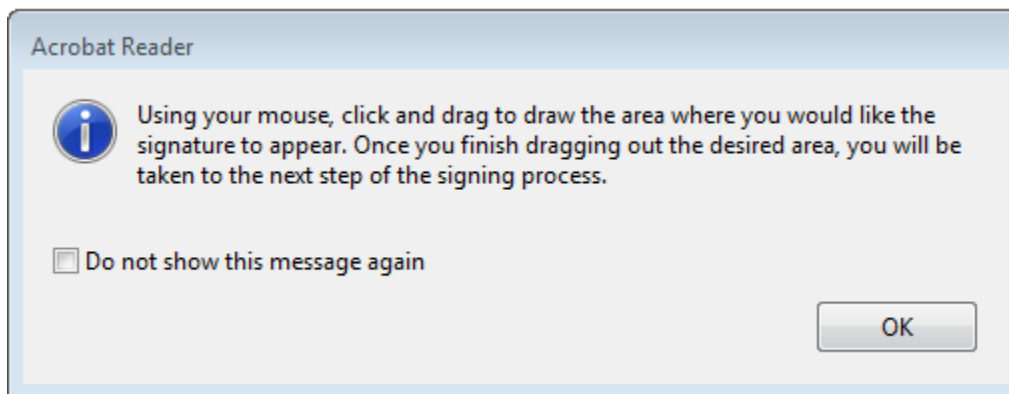
(5) Click on “Certificates.”



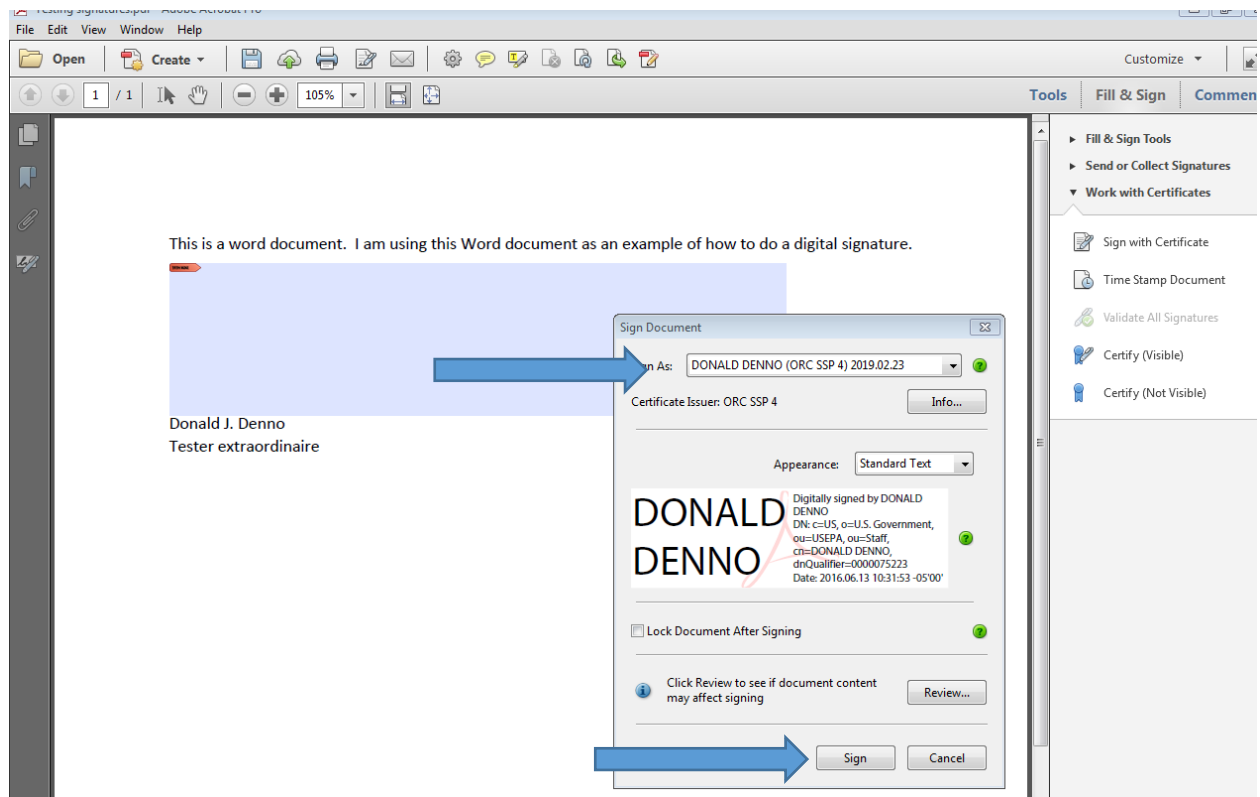
(6) Insert your EPASS card in your computer and click on “Digitally Sign.”



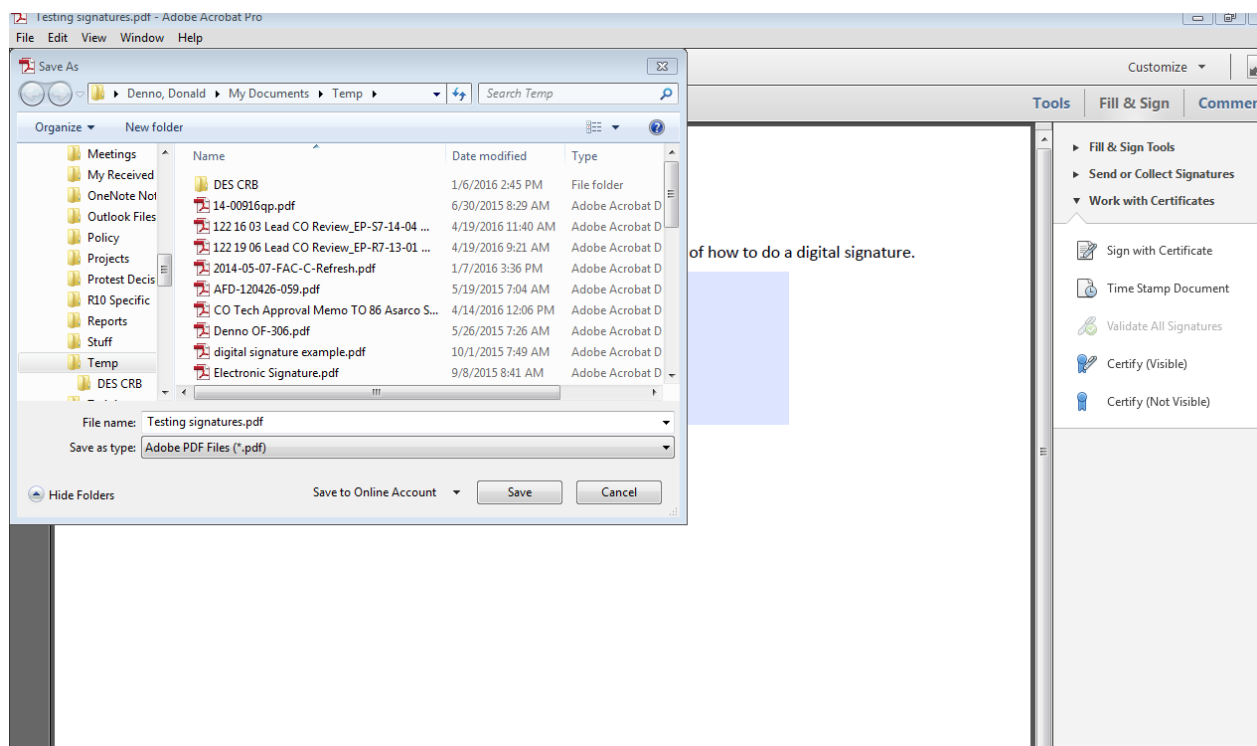
(7) Read the pop-up below and then click “OK”



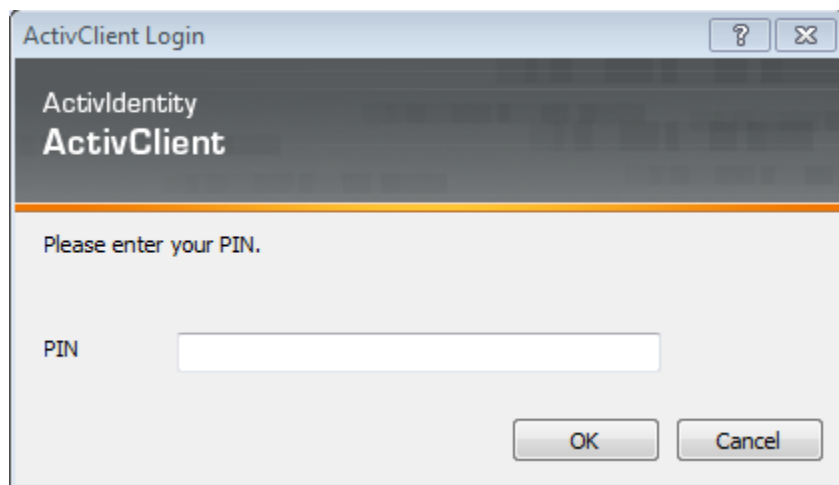
(8) Use your mouse to draw a box where you want the signature to appear. Once you let go of the mouse button, a pop-up window will appear. Select the appropriate certificate (should be the second ORC SSP 4 choice with the most recent date) and click “Sign.”



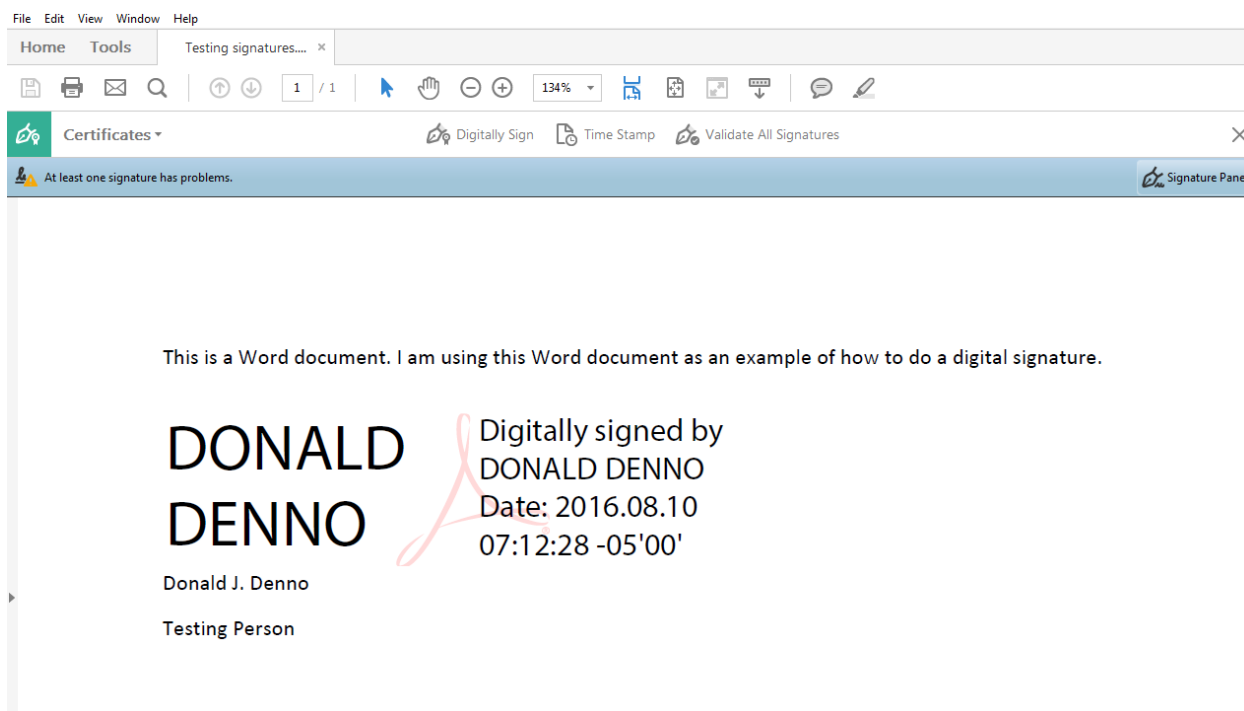
(9) A window will appear that will allow you to save the document again. You can either save with the same name (a confirmation window will appear) or give the document a new name.



(10) Enter you EPASS PIN in the pop-up below and click OK.



(11) Your document will now appear with your digital signature affixed; see cheeky sample below.



Subsection 4.5.2 - FedConnect Use in EAS (December 2014)

This subsection was previously Interim Policy Notice (IPN) 14-04, *FedConnect Implementation in EAS*.

4.5.2.1 Purpose.

The purpose of this subsection is to provide guidance for EPA's contracting community on the use of FedConnect in the EPA Acquisition System (EAS) contract writing program.

4.5.2.2 Background.

In the interest of moving towards a paperless acquisition environment, this subsection implements FedConnect as the electronic communications portal between EPA and the contracting community. FedConnect is a web portal that connects agencies and vendors to streamline the process of doing business with the federal government. It also provides an open channel of communication with the government that is both secure and auditable. Through FedConnect offerors will be able to review opportunities and receive awards. Using FedConnect will also align the EPA with several other federal agencies that are already using FedConnect as their standard communications portal, including DOE, DHS, SBA, DOI, SSA, DOT and HUD.

4.5.2.3 Authority/Applicability.

This subsection is issued in accordance with FAR 1.301(a), 1.401(f), and EPA Delegations Manual Chapter 1-2.

4.5.2.4 Definitions [Reserved].

4.5.2.5 Policy.

Effective March 12, 2014, EPA uses FedConnect as the communications portal for its current and potential contractors, and FedConnect is required for use for all procurement actions (including sole source) over the micropurchase threshold (*see 4.5.2.7 for solicitation exemptions*). Notices and solicitations required by FAR Part 5 will continue to be sent to FedBizOpps via EAS, with additional information available to interested entities via FedConnect.

Contracting officers shall no longer require the submission of hard copies of proposals, bids, offers or quotes. This revised policy reflects EPA's commitment to reducing its carbon footprint and conducting its business in a more ecologically friendly manner. To the extent required, contracting officers and other EPA personnel may print out relevant portions of proposals, bids, offers or quotes.

The FedConnect portal will be used throughout the lifecycle of EPA's acquisition process, from the presolicitation/planning phase to close-out. (*Note: Contracting Officer's Representatives (CORs) are not currently required to use FedConnect during post-award contract administration; see 4.5.2.9, Message Center, for more information.*) FedConnect shall be the primary vehicle for all electronic communications.

All current and potential contractors must use FedConnect which is available at <https://www.fedconnect.net/FedConnect/>. Contracting officers/contract specialists who experience FedConnect problems can submit an EAS help desk ticket for service. Because FedConnect is hosted by Compusearch, vendor/contractor questions relating to FedConnect will be answered by Compusearch and not EPA. Contact information is provided at the FedConnect web site above.

EAS award documents shall be signed electronically and a manual signature is not required. While it is Agency policy for the Enterprise Content Management System (ECMS) to be considered the official contract file, all pre- and post-award contract documentation required in accordance with FAR 4.803 shall be maintained in electronic form and shall reside in EAS, except for any documents required by regulation to be maintained in paper copy. (It is envisioned that EAS and ECMS will interface at a later date; requirements for the interface are currently being processed.) All actions done on all contracts, unless previously specified, shall be done using FedConnect from March 12, 2014, forward. While the official file for these contracts will continue to be comprised of the paper file, electronic copies of documentation will also be stored in EAS after March 12, 2014. This will enable EAS to be more rapidly integrated with ECMS in the future, at which time the paper file will no longer be required.

4.5.2.6 Contracting Officer Requirements

Proposed Contract Action Posting Requirements. Contracting officers shall post proposed contract actions over the micropurchase threshold to the FedConnect web portal unless one of the exemptions in 4.5.2.7 applies. In addition, when posting proposed contract actions in accordance with FAR 5.101, contracting officers shall include the following text in the initial FedBizOpps (FBO) posting. The subject language alerts potential offerors that future actions relating to the subject procurement will be posted using FedConnect. It also advises potential offerors that they may register to submit related questions and view responses.

Text: “Notices of any modifications to this FBO procurement announcement, including Requests for Proposals and amendments, will be posted using the FedConnect web portal. FedConnect can be accessed at <https://www.fedconnect.net/Fedconnect/>. Questions regarding the content of the subject announcement must be submitted through the FedConnect portal. You must register with FedConnect to submit questions and to view responses.

FedConnect is a web portal that connects agencies and vendors to streamline the process of doing business with the federal government. Through FedConnect contractors will be able to receive, review and respond to contract pre- and post-award actions and documents such as correspondence, request for proposals, tasking instruments and contract modifications. The use of FedConnect also furthers the EPA’s commitment to moving towards a paperless acquisition environment by reducing its carbon footprint and conducting its business in an ecologically friendly manner. **There is no charge to use FedConnect.**

Vendors can register with FedConnect at www.fedconnect.net/FedConnect/. For assistance in registering or for other FedConnect technical questions please call the FedConnect Help Desk at (800) 899-6665 or email at support@fedconnect.net.

In addition, all vendors must be registered in the System for Award Management (SAM), as this facilitates registration for FedConnect. Please note that vendors MUST have their SAM profile

set to “public,” otherwise FedConnect will not be able to access the SAM information required to validate vendor credentials. Registration may be completed and information regarding the registration process may be obtained at <http://www.sam.gov>. There is no charge for registration in SAM.”

4.5.2.7 Exemption from FedConnect Solicitation Requirements

The following procurement actions are exempt from FedConnect solicitation requirements:

- (a) Oral solicitations conducted in accordance with FAR 13.106-1(c). However, electronic copies of procurement action documentation (e.g., source selection) shall be added to the EAS award file within three working days of documentation signature.
- (b) Requirements purchased through GSA's electronic request for quote (RFQ) system *e-Buy*. However, electronic copies of the RFQ, quotes and other interactions that are in *e-Buy* shall be added to the EAS award file within three working days of receipt of transmitted RFQ, quote or other interaction.
- (c) Requirements purchased through the reverse-auction marketplace *FedBid*. However, electronic copies of the solicitation, bids and other interactions that are in *FedBid* shall be added to the EAS award file within three working days of receipt of transmitted solicitation, bid or other interaction.
- (d) Requirements purchased through a Government-Wide Acquisition Contract (GWAC) electronic RFQ system (e.g., NASA's SEWP IV for IT products, NIH's NITAAC for IT procurement). However, electronic copies of the solicitation, bids and other interactions that utilized the GWAC electronic RFQ system shall be added to the EAS award file within three working days of receipt of transmitted solicitation, bid or other interaction.
- (e) Requirements where commercial practice prohibits the ability to utilize FedConnect to obtain quotes or proposals (e.g., micropurchase software subscriptions where the commercial practice is to enter data into the vendor system to generate a quote). However, electronic copies of the quote and other interactions shall be added to the EAS award file within three working days of receipt of transmitted quote or other interaction.
- (f) Requirements below the simplified acquisition threshold (SAT) where the contracting officer does not have a reasonable expectation of receiving offers through FedConnect (for instance, due to vendor nonuse) that are competitive in terms of market prices, quality and delivery. In such cases, the contracting officer shall document the specific circumstances supporting their determination that the use of FedConnect is not advantageous to the government and comply with the competition requirements of FAR 13.106-1. This exemption does not apply to separate applicable SAM registration requirements. Electronic copies of the quote and other interactions shall be added to the EAS award file within three working days of receipt of transmitted quote or other interaction.

4.5.2.8 Solicitation Provisions and Contract Clause

- (a) Contracting officers shall include Provision EPA-L-15-102, “Technical Questions,” (*provision located in Section 52.2*) in solicitations when technical questions may be submitted and submissions are

required to be sent through FedConnect in accordance with Subsection 4.5.2. Alternate I shall be used when submittal through FedConnect is not required; e.g., when an exception from 4.5.2.7 applies.

(b) Contracting officers shall include Provision EPA-L-15-104, “Electronic Submission of Proposals/Bids/Offer/Quotes,” (*provision located in Section 52.2*) in solicitations and request for quotes (RFQs) for proposed contract actions over the micropurchase threshold unless a stated exemption from 4.5.2.7 or other applicable guidance applies.

(c) Contracting officers shall include Provision EPA-L-36-101, “Proposal Instructions,” (*provision located in Section 52.2*) in negotiated procurement actions over the micropurchase threshold when submissions are required to be sent through FedConnect. The contracting officer may make revisions, deletions, or additions to this provision as needed to fit an individual acquisition (e.g., page limitations if applicable). Alternate I shall be used when submittal through FedConnect is not required.

(d) Contracting officers shall include Clause EPA-H-42-102, “Utilization of FedConnect for Contract Administration” (*clause located in Section 52.2*) in contracts which use the FedConnect web portal to administer the contract.

4.5.2.9 FedConnect’s Message Center Module

When communicating in FedConnect, the communication becomes part of the EAS contract file. FedConnect’s Message Center is a communication tool designed to have most of the functionality found in e-mail programs. The Message Center facilitates secure, bi-directional communication between vendors, contractors and recipients using FedConnect. It can help organize records of vendor/contractor responses, emails, faxes, phone calls and letters. Using the Message Center allows agencies and vendors/contractors to send email-style messages, including attachments, back and forth through the secure FedConnect portal.

Note: The functionality provided by EAS in regards to COR access to the message center requires enhancement, and enhancement changes have been submitted to the EAS contractor for consideration. Therefore, the requirement to use FedConnect does not currently apply to CORs. This subsection will be updated when CORs are required to use FedConnect. Any electronic communications received outside of FedConnect shall be added to the EAS contract file within three working days of receipt of sent electronic communication.

4.5.2.10 Non-EAS-Generated Documents

FedConnect can be used for all electronic communications between the contractor and EPA. When communicating in FedConnect, the communication becomes part of the EAS contract file. EAS-generated documents (e.g., contract modifications) are easily transmitted between the parties via FedConnect. Non-EAS-generated documents (e.g., monthly progress reports) can also be transmitted between the parties via FedConnect, the use of which would add the document to the EAS contract file without having to scan or copy the electronic file from another source. While this does not preclude electronic delivery outside of FedConnect (e.g., Outlook and Lotus Notes e-mail), FedConnect shall be the primary vehicle for all electronic communications because the communication becomes part of the EAS contract file. Any electronic communications received outside of FedConnect shall be added to the EAS contract file within three working days of receipt.

4.5.2.11 Confidential Business Information

Procurement-sensitive and confidential business information (e.g., vendor proposals) accessed through FedConnect and EAS in accordance with this subsection is to be safeguarded as applicable and appropriate in accordance with Section 3.2, *Safeguarding Bids and Proposals*.

4.5.2.12 Federal Electronic and Information Technology Accessibility Standards Compliance

FedConnect is a web communications portal that is fully compliant with Federal Electronic and Information Technology Accessibility Standards Section 1194.22, *Web-Based Intranet and Internet Information and Applications*, and should be usable with assistive technologies. Should users experience usage problems they should consult the FedConnect help desk at 1-800-899-6665 or support@fedconnect.net for resolution. If the FedConnect help desk is unable to assist, please contact the PTOD 508 compliance point of contact (currently Rodney Neely at 202-564-2330 or neely.rodney@epa.gov).

4.5.2.13 Manual Entry of Vendor Responses when FedConnect is Not Functioning

The manual entry process shall be used only when the automated process supported by FedConnect is not functioning or other similar rationale; e.g., EPA's Internet connection is not stable. Approval for using the manual entry process must be approved one level above the contracting officer. Quality assurance plans (QAPs) should be revised to include review of the manual entry process to ensure compliance with this paragraph.

CHAPTER 4—ADMINISTRATIVE MATTERS

Section 4.8 – Government Contract Files

Subsection 4.8.1 - Closing-Out and Retiring Completed Contracts (December 2019)

4.8.1.1 Purpose.

This subsection establishes policy and implements a Standard Operating Procedure (SOP) for closing out and retiring completed contracts.

4.8.1.2 Background.

The Office of Acquisition Solutions (OAS) established a Contract Close Out Team in April 2015 that is responsible for performing all the required reviews and processes to close and retire completed contracts in an efficient and effective manner. The Contract Close Out Team will coordinate and interface with the Contracting Officers (COs), Contract Specialist (CS), Contracting Officer Representatives (CORs), Contractors; and other key stakeholders as needed to effectuate efficient and timely actions to close and retire completed contracts.

4.8.1.3 Authority/Applicability.

These procedures are applicable to all contracts being administered by the contracting activity and/or the Contract Close Out Team with responsibility for closing out and retiring contracts. The Agency and federal requirements for closing out and retiring completed contracts specified herein are pursuant to the Federal Acquisition Regulation (FAR), 4.804 and 4.805. Due to the complexities of Government procurement, every contract situation cannot be covered by a single procedure; therefore, use of this EPAAG subsection and the OAS's Standard Operating Procedures for Closing Out and Retiring Completed Contracts is mandatory. The Close Out Team, Contract Specialists, and Contracting Officers are to exercise judgment and discretion in utilizing these guidelines and deviating from or expanding upon them as appropriate while complying with the FAR.

4.8.1.4 Definitions.

(a) **Closed Contract** – See FAR Parts 4.804-4 and 4.804-5.

(b) **Contract Closeout Checklist**—EPAAG 4.8.1-A, Checklist for Contract Closeout shall be use

Subsection 4.8.1

as a guide and confirmation that the required closeout actions have been completed.

- (c) **Contract Completion Statement**—See FAR 4.804-5
- (d) **Contract Close Out Team** – Team established by the Office of Acquisition Solution which is responsible for timely and accurately closing out and retiring completed contracts.
- (e) **Contracting Activity** – Any of the contracting offices within OAS, Cincinnati, RTP, or any Regional Office.
- (f) **Completion Voucher or Invoice** – An invoice or voucher that must be submitted by the contractor within 120 days (or longer period if approved in writing by the closeout contracting officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract reflecting the settled amounts and rates. The completion voucher or invoice shall include settled subcontract amounts and rates (see FAR 52.216-7(d)(5)). For Time and Materials contracts whether commercial or non-commercial, no later than 1 year from completion of work under the contract.
- (g) **Final Voucher**— Submitted by the contractor within 60 days after settlement of final indirect cost rates for the applicable fiscal year. Sometimes it may be referred to as an adjustment voucher.
- (h) **Litigation Hold** - A litigation hold requires an identified contract to be held pending the completion of litigation that the contract's work may have supported. The contract itself is not under litigation and can be closed. It cannot be destroyed until the hold is lifted and the records retention requirement has been met.
- (i) **Physically Complete** - The contractor has completed the required deliveries and the Government has inspected and accepted the supplies; the contractor has performed all services and the Government has accepted these services; and all option provisions, if any, have expired (i.e. the period of performance has expired); or the Government has given the contractor a notice of complete contract termination.
- (j) **Records Retirement Notice**—Identifies the records retention schedule.
- (k) **Site Specific**—A contract that has been identified as site specific (normally SRRPOD or Regions). These contracts have a records retention schedule longer than the FAR requirement. It does not affect closeout.

4.8.1.5 Policy.

EPA employees shall follow the policies in this subsection and the procedures specified in the SOP when performing duties related to the close out and retirement of completed contracts.

4.8.1.5.1 Roles and Responsibilities

The key stakeholders in closing and retiring completed contracts are:

(a) **The Close Out Team.** The Close Out Team consists of a Contracting Officer and Contract Specialists.

(b) **The Contracting Officer.** The CO is responsible for negotiating indirect rates for quick closeout, reviewing all closeout documents, signing the contract completion statement, signing the records retirement notice, and resolving issues that cannot be resolved by the CS. The CO should provide status of any litigation holds, if known. The CO is also responsible for processing contract modifications as they relate to closeout.

(c) **The Contracting Officer Representative.** During the closeout process, the Contracting Officer Representative is responsible for confirming the receipt of deliverables and other items as identified on the closeout checklist and identifying any issues which would prevent contract closeout. In addition, the COR should provide status of any litigation holds, if known. The COR should also state whether the contract is site specific or not, which affects records retention, but not closeout.

(d) **The Contract Specialist.** The Contract Specialist is responsible for reviewing the contract and delivery order/task order files and obtaining all necessary documentation to ensure that all actions required to close out the contract, the delivery order/task order or other simplified purchase methods are completed and documented by completing and signing the contract closeout checklist (if applicable). The CS shall resolve issues that don't require the COs attention.

(e) **Financial Analysis and Oversight Branch (FAOB).** FAOB is responsible for financial monitoring, rate negotiation, and audits of contractors. It is also a liaison with cognizant audit agencies. FAOB distributes indirect rate agreements to contracting officers and has audits on file that should be used to assist with contract closeout. The CO should consult with FAOB to obtain information on a contractor's financial/audit history to determine the risk associated with quick closeout.

(f) **The RTP-Finance Center.** The RTP-Finance Center is responsible for processing final payments or accepting checks from contractors, as a result of contract closeout. They can also provide copies of invoices, if needed. In cases where a contract cannot be found either physically or in EAS, the RTP-Finance Center might be able to provide a copy.

4.8.1.5.2 Timelines.

Completed contracts shall be closed and retired pursuant to the timeline requirements

specified in the FAR 4.804 and the SOP.

4.8.1.5.3 Retirement and Disposal of Contract Files.

After compliance with established procedures for handling, storing, and disposition of contract files, the documents shall not be destroyed prior to the period specified in EPA's Records Retention Schedules ([1004](#), [020](#)). In addition, any contracts identified as being under a litigation hold cannot be destroyed until the hold is cleared.

**STANDARD OPERATING PROCEDURES
for
CLOSING OUT and RETIRING COMPLETED CONTRACTS**

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(A) Simplified Acquisitions (including GSA orders)

The following procedures should be used to complete the closeout process of orders under the simplified acquisition threshold.

1. Locate the purchase order file, including:
 - (a) Physical copy or
 - (b) Electronic EPA Acquisition System (EAS) record
 - (c) Electronic Compass Data Warehouse (CDW) record
2. Contracts with actions that are still “In Progress” shall not be closed until those actions are “Released/Closed”, normally by the administrative contracting office.
3. Reconcile any discrepancies in the above records.
4. Verify with the Contracting Officer’s Representative (COR) that: the period of performance has expired, services are complete and accepted, supplies or deliverables have been received and inspected/accepted, is the contract under dispute/litigation, or if a termination has not been completed. Are there any other reasons why this contract cannot be closed (e.g. unpaid invoices)?

If the above has not been satisfied or the contract is in litigation, under appeal, or has not had termination actions completed, it cannot be closed out until the above have officially concluded.

5. Check CDW to determine if there are any unliquidated amounts.
 - a. If there are unliquidated amounts, the following steps should be taken:
 - i. Contact the COR to ensure that the supplies or services have been received as ordered. If after several attempts no affirmative or negative determination is made, the supplies or services will be deemed to have been accepted as ordered. Furthermore, where the COR is unresponsive during any part of this process, the Contracting Officer (CO) will review the available information and decide whether to proceed without COR input on any aspect of the closeout process.
 - ii. Contact the contractor’s representative to verify that final payment has been made and no further invoices will be issued. If there is no response after several attempts, final payment will be deemed to have been made. Furthermore, where the contractor is unresponsive during any part of this process, the CO will review the available information and decide whether to proceed without contractor input on any aspect of the closeout process.
 - iii. After it is determined that there has been acceptable receipt of supplies or services and final payment has been made, a modification to the order shall be made to de-obligate the remaining funds on the order. The modification should

indicate that it is for closeout. After the modification has been processed, close the order in EAS via the 'Closeout' function. The applicable fields relevant to the closeout should be filled in (e.g. all items received, period of performance expired, warranty information, applicable checklist items). The physical file should be annotated on the outside of the folder with the word "Closed" and the date closed in EAS for easy identification. The file should be brought to the area designated for closed files.

If a de-obligation is not necessary, close the order in EAS via the 'Closeout' function. The applicable fields relevant to the closeout should be filled in (e.g. all items received, period of performance expired, warranty information, applicable checklist items). The physical file, if available, should be annotated on the outside with the word "Closed" and the date closed in EAS for easy identification. The EAS closeout page may be printed and inserted into the file as well. The file should be brought to the area designated for closed files.

Note: Due to the low probability that Simplified Acquisition (SAs) will be subject to litigation holds or "site specific" purchases, those questions are not asked of the COR and the Records Retirement Notice form is not used. However, the questions and form may be used if desired.

(B) Commercial Item Contracts (FAR 12) and Non-Commercial Item Contracts That Do Not Use Indirect Rates (Over the Simplified Acquisition Threshold (SAT))

The following procedures should be used to complete the closeout process for Commercial and Non-Commercial Item Contracts that don't use indirect rates.

These contracts include but are not limited to: Firm Fixed Price, Fixed Price with Economic Price Adjustments, Commercial Time and Materials (T&M)/Labor Hour (LH) or non-commercial LH contracts. Other fixed priced-type contracts are also included. **In no case should any of these contracts allow for indirect rates.**

Note: It is not uncommon to find commercial T&M contracts that allowed for indirect rates (i.e. G&A). These rates are **not** allowed, and the CO will need to determine whether to allow such charges (i.e. what contract clause the rates are located).

The procedure for closing these types of contracts is described below. The Checklist for Contract Closeout shall be used to ensure all closeout actions have been accomplished.

Determine if the Contract is Physically Complete:

1. Locate the contract, including:
 - (a) Physical copy or
 - (b) Electronic EAS record and
 - (c) Electronic CDW finance records

2. Contracts with actions that are still “In Progress” shall not be closed until those actions are “Released”, normally by the administrative contracting office.
3. Reconcile any discrepancies in the above records.
4. Verify with the COR that: The period of performance has expired (to include task orders/delivery orders), services are complete and accepted, supplies or deliverables have been received and inspected/accepted, is the contract under dispute/litigation, or if a termination has not been completed. Are there any other reasons why this contract cannot be closed (e.g. unpaid invoices)?
5. For HQAD (Superfund/Regions), the COR should also be asked if the order is site specific. This would affect records retention.
6. In addition, is the contract under litigation hold? The litigation hold link is <http://litholdandcollect.epa.gov/portal>. If nothing comes up for the CO, s/he does not have any contracts under litigation hold. If information does appear, the CO will need to investigate which contracts are affected by the hold (the legal point of contact is listed in the hold). Litigation holds do not prevent closeout, but they do prevent destruction and can affect records retention. If a red banner appears at the top of the screen, click on it to access the site.

If the above has not been satisfied or the contract is in litigation (not litigation hold), under appeal, or has not had termination actions completed, it cannot be closed out until the above have officially concluded.

If the contract can be closed, it would be advantageous to ask the COR for the status of any administrative actions that need to be verified as listed below beginning at number 7.

In addition, the contractor should be contacted (Sample Letter, Appendix 4.8.1-A and Contractor Closeout Certification, Appendix 4.8.1-D) to start the closeout process, after the COR has confirmed physical completion.

Determine if the Contract is Administratively Complete:

7. Print out the CDW Contract Account Balance report. This report will show if there are any remaining funds on the contract. Print out the CDW Contract Cost Paid report. This report will list by contract/order how much was paid on each and any suspensions/disallowed costs. Determine if there is a funding balance remaining on the contract and why (e.g. unpaid invoice). For the contractor’s release form, the total dollar amount must match what is on the Contract Account Balance report (to include any adjustments for final payment) or it will be rejected by RTP.

Note: The FAR does not state that these types of contracts require a contractor’s release. However, it is highly recommended to request a release for all contracts over the SAT. **For a commercial time and materials or labor hour contract, a release is required for the**

contractor and each assignee whose assignment is in effect at the time of final payment per FAR 52.212-4 Alt I.

8. Classified Material: Verify with the COR that classified material has been properly dispositioned, if applicable.

9. Patents: When the contract contains patent rights clause, FAR 52.227-13 Patent Rights--Ownership by the Government, the Contract Specialist (CS) needs to verify with the COR that the contractor submitted a final patent report. This report is due within 3 months after physical completion of the contract. If the report is not received, the CS shall notify the contractor of its obligation to report in accordance with FAR 52.227.13. If the contractor fails to respond, the CO may proceed with contract closeout upon consultation with patent legal counsel. The report should list all subject inventions or stating that there were none and list all subcontracts at any tier containing a patent rights clause or stating that there were none. Final patent reports should be cleared within 60 days of receipt.

When the contract contains patent rights clause, FAR 52.227-11 Patent Rights—Ownership by the Contractor, a final patent report is not required prior to closeout unless the CO modified the clause requiring one per FAR 27.303(b)(2)(ii). The CS should verify with the contractor if inventions were made (a negative report). A formal form is not required (email is acceptable).

EPA Form 3340-4, “Summary Report of Inventions and Subagreements or Subcontracts” or contractor equivalent form is required, if clause 52.227-13 is used.

10. Royalties: When the contract contains clause 52.227-9 Refund of Royalties, the contract price may include certain amounts for royalties payable by the contractor, subcontractor, or both. Before final payment can be made, the CO shall review a statement provided by the contractor of royalties paid or required to be paid in connection with performing the contract and subcontracts thereunder, together with reasons. If royalties were included in the contract price and are determined by the CO to be properly chargeable to the Government and allocable to the contract/order, then the contractor will be compensated, and this action is complete. If royalties were included in the contract price and were not in fact paid by the contractor or are determined by the CO not to be properly chargeable to the Government and allocable to the contract, then the contract price shall be reduced. Repayments or credits to the Government shall be made as the CO directs, completing this action.

11. No Outstanding Value Engineering Change Proposal, if applicable: When the contract contains FAR clauses 52.248-1 Value Engineering, 52.248-2 Value Engineering—Architect-Engineer, or 52.248-3 Value Engineering—Construction, the CO shall verify that there are no outstanding change proposals as this could change the value of the contract.

12. Plant Clearance Report Received, if applicable: A plant clearance officer normally would be assigned. Usually the Agency Property Officer is the plant clearance officer. This

action is in conjunction with item 13, Property.

13. Property: When the contract/order contains FAR clause 52.245-1 Government Property, or EPAAR 1552.245-70 Government Property, confirm if there was property on the contract. Usually the property will be listed, or “none” stated in the clause. If so, was a modification done to remove the property in accordance with the EPAAG section 45.6? If not, has the COR confirmed disposition of the property? Has the contractor submitted a final property report to the property administrator if required by the contract? The property administrator may need to be contacted to ensure disposition of property, especially if there was a large amount of property on the contract. In some cases, the CO decision may be required to clear property.

14. Price Revision Completed: When the contract contains FAR clauses 52.216-4, 52.216-5, 52.216-6, 52.216-10, 52.216-16, or 52.216-17, the CO shall verify that all adjustments to pricing have been completed.

15. Subcontracts Settled by Prime Contractor: If the contract indicates that subcontractors were used, the contractor will need to certify that the subcontractors were paid. This would not apply to firm fixed price contracts.

16. Termination Docket Completed, if applicable: If the contract was under termination proceedings, the CO is to confirm that the termination action has been completed.

17. All Interim or Disallowed Costs Settled: When the contract contains clause 52.242-1, “Notice of Intent to Disallow Costs”, the CO shall confirm that all interim or disallowed costs are settled under the contract/order prior to closeout reference FAR Part 42.801. Disallowed costs may be listed in CDW under the Contract Cost Paid report.

18. A “final” invoice is not applicable for these types of contracts. However, a completion invoice is required for T&M/LH contracts and should be submitted as soon as practicable after completion of the work, but no more than one year from the date of completion. If the contractor signs the contractor’s release form in lieu of a completion invoice, that is acceptable unless funds are due the contractor. If funds are due, then a completion invoice needs to be submitted showing the amount due and under which task order(s), if applicable. All forms may be submitted via email.

Note: Due to EPA’s financial system, individual invoices will need to be submitted per task order for which funds are due. Most contractors call these final invoices, some call them completion invoices, while some do not provide any indication. It is highly recommended that the contractor identifies the type of invoice in the invoice number (usually adding a “C” or “F” after the number) so it is easily identifiable in the CDW payments record. Contracting Officers will advise contractors to identify these invoices with a “C” or “F”, if necessary.

19. If funds are due to the contractor, submit a modification to RTP adding funds to each

order for which payment is owed. (See Attachment 4.8.1-A) The contractor's release needs to reflect the final amount paid and payable. The contract/orders cannot be closed until the contractor is paid.

Note: It is not required that a release form be submitted with each task order. A release form can be at the contract level; however, some contractors submit them at the task order level. The CO may decide to have a release form at the task order level depending on the dollar amount of the task order itself.

20. The CS shall complete the Contract Closeout Checklist, Contract Completion Statement (Appendix 4.8.1-E), and Records Retirement Notice (Appendix 4.8.1-F). Submit these and the following documents to the CO for review and signature. This is the contract closeout packet in this order:

1. Contract Completion Statement.
2. Contractor's Release (and each assignee), as applicable.
3. Contract Closeout Checklist.
4. Any other documents needed for closeout (i.e. property, patent, COR/CO e-mail confirmation of actions, etc.), as applicable.
5. Records Retirement Notice.

21. Once signed by the CO, scan and upload the completed documents to the Base contract supporting file in EAS. It is advisable to create a separate "Closeout" folder under the supporting documents tab. Label this scanned file "Contract Closeout Packet" or similar label. Update the EAS Contract Closeout Module fields (not the on-line checklist) with the required information and closeout the contract. Do not fill in the destruction date.

22. E-mail the packet to RTP Finance Center-Obligations, and copy the CO, for closeout in the financial system. The Contract Data in CDW should reflect the contract as closed (with CO's name and date closed) normally within 3-5 days of submission. If that has not happened, notify RTP.

23. If a physical file is available, put the closeout packet in the main contract file under a tab labeled "Closeout". Ensure that the Records Retirement Notice is on top of the closeout tab in the file, readily available for the file clerk. In addition, write on the outside of the main contract files "Closed" and the date the contract was closed. The file should be brought to the area designated for closed files, if one has been designated.

Claims:

For T&M/LH contracts in accordance with FAR 52.212-4 Alt I (i)(7), claims can be submitted as stated in the clause within 6 years, in writing, from the date of the release form or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

In accordance with FAR 33.206, this time period does not apply to contracts awarded prior to October 1, 1995. Refer to the contract to see if any clauses were included referencing claims. If not, technically, the contract can linger open indefinitely. COs and CS' should contact the Office of General Counsel (OGC) for help in determining if EPA is liable for any claim.

In accordance with FAR 52.233-1(c) Disputes, a voucher, invoice, or other routine request for payment that is not in dispute when submitted, is not a claim under the Act. However, it may be converted to a claim by written notice to the CO, as provided in FAR 33.206(a).

(C) Non-commercial Time and Materials and Cost-Reimbursement Type Contracts (contracts that use indirect rates)

The following procedures should be used to complete the closeout process of orders under the simplified acquisition threshold.

The procedure for closing these types of contracts is described below. The Checklist for Contract Closeout shall be used to ensure all closeout actions have been accomplished.

Non-commercial time and materials and cost-reimbursement type contracts are subject to FAR 52.216-7 Allowable Cost and Payment clause. For these types of contracts to be eligible for closure, all indirect rates applicable to the contract years should be final rates. If the rates are not final, then Quick Closeout (Attachment 4.8.1-D) may be used if the criteria for such is met.

Note: If the rates are not yet finalized, but the period of performance (POP) has expired, start an "Interim" contract closeout checklist. This will ensure timely answers to the physically complete and applicable administratively complete questions. Waiting until all rates are finalized could take many years beyond the POP end date, resulting in the COR/CO no longer being available to answer the questions. In addition, a letter to the contractor should be sent requesting certification to the administrative closeout questions (Sample Letter, Appendix 4.8.1-C and Contractor Closeout Certification, Appendix 4.8.1-D). Upload the checklist and contractor's response in EAS to the base supporting document folder labeled "Closeout". Name the file, "Interim Closeout" or similar designation.

Print out any needed reports from CDW to help with closeout (e.g. Contract Account Balance, Contract Cost Balance, Contract Cost Payment, Contract Data).

Determine if the Contract is Physically Complete:

1. Locate the contract, including:
 - (a) Physical copy or
 - (b) Electronic EAS record and
 - (c) Electronic CDW record
2. Contracts with actions that are still "In Progress" (does not apply to work assignments) shall

not be closed until those actions are “Released”, normally by the administrative contracting office.

3. Reconcile any discrepancies in the above records.
4. Verify with the COR that: the period of performance has expired (to include task orders/delivery orders), services are complete and accepted, supplies or deliverables have been received and inspected/accepted, the contract is not under dispute/litigation, or if a termination has been completed. Are there any other reasons why this contract cannot be closed (e.g. unpaid invoices)?
5. For HQAD (SRRPOD)/Regions, the COR should also be asked if the order is site specific, as this would affect records retention.
6. Is the contract under litigation hold? The litigation hold link is <http://litholdandcollect.epa.gov/portal>. If nothing comes up for the CO, s/he does not have any contracts under litigation hold. If information does appear, the CO will need to investigate which contracts are affected by the hold (the legal point of contact is listed in the hold). Litigation holds do not prevent closeout, but they do prevent destruction and can affect records retention. If a red banner appears at the top of the screen, click on it to access the site.

If the above has not been satisfied or the contract is in litigation (not litigation hold), under appeal, or has not had termination actions completed, it cannot be closed out until the above have officially concluded.

If the contract can be closed, then it would be advantageous at this stage to ask the COR for the status of any administrative actions that need to be verified, as listed below beginning at number 7.

In addition, the contractor should be contacted (Sample Letter, Appendix 4.8.1-B and Contractor Closeout Certification, Appendix 4.8.1-D, if not previously submitted) to start the closeout process, after the COR has confirmed physical completion.

Determine if the Contract is Administratively Complete:

7. Classified Material: Verify with the COR that classified material has been properly dispositioned, if applicable.
8. Patents: When the contract contains patent rights clause, FAR 52.227-13 Patent Rights--Ownership by the Government, the CS needs to verify with the COR that the contractor submitted a final patent report. This report is due within three months after physical completion of the contract. If the report is not received, the CO shall notify the contractor of its obligation to report in accordance with FAR 52.227.13. If the contractor fails to respond, the CO may proceed with contract closeout upon consultation with patent legal counsel. The

report should list all subject inventions or stating that there were none, and list all subcontracts at any tier, containing a patent rights clause or stating that there were none. Final patent reports should be cleared within 60 days of receipt.

When the contract contains patent rights clause, FAR 52.227-11 Patent Rights—Ownership by the Contractor, a final patent report is not required prior to closeout, unless the CO modified the clause requiring it per FAR 27.303(b)(2)(ii). The CS should verify with the contractor, if inventions were made (a negative report). A formal form is not required (email is acceptable).

EPA Form 3340-4 “Summary Report of Inventions and Subagreements or Subcontracts” or contractor equivalent form is required, if clause 52.227-13 is used.

9. Royalties: When the contract contains clause 52.227-9-Refund of Royalties, the contract price may include certain amounts for royalties payable by the contractor, subcontractor, or both. Before final payment can be made, the CO shall review a statement provided by the contractor of royalties paid or required to be paid in connection with performing the contract and subcontracts thereunder, together with reasons. If royalties were included in the contract price and are determined by the CO to be properly chargeable to the Government and allocable to the contract/order, then the contractor will be compensated, and this action is complete. If royalties were included in the contract price and were not in fact paid by the contractor or are determined by the CO not to be properly chargeable to the Government and allocable to the contract, then the contract price shall be reduced. Repayments or credits to the Government shall be made as the CO directs, completing this action.

10. No Outstanding Value Engineering Change Proposal, if applicable: When the contract contains FAR clauses 52.248-1 Value Engineering, 52.248-2 Value Engineering—Architect-Engineer, or 52.248-3 Value Engineering—Construction, the CO shall verify that there are no outstanding change proposals, as these could change the value of the contract.

11. Plant Clearance Report Received, if applicable: A plant clearance officer normally would be assigned. Usually the Agency Property Officer is the plant clearance officer. This action is in conjunction with item 12, Property.

12. Property: When the contract/order contains FAR clause 52.245-1 Government Property, or EPAAR 1552.245-70 Government Property, confirm if there was property on the contract. Usually the property will be listed, or “none” stated in the clause. If so, was a modification done to remove the property in accordance with EPAAG section 45.6? If not, has the COR confirmed disposition of the property? Has the contractor submitted a final property report to the property administrator if required by the contract? The property administrator may need to be contacted to ensure disposition of property, especially if there was a large amount of property on the contract. In some cases, a CO decision may be required to clear property.

13. Price Revision Completed: When the contract contains FAR clauses 52.216-4,

52.216-5, 52.216-6, 52.216-10, 52, 216-16, or 52.216-17, the CO shall verify that all adjustments to pricing have been completed.

14. All Interim or Disallowed Costs Settled: When the contract contains clause 52.242-1 “Notice of Intent to Disallow Costs”, the CS shall confirm that all interim or disallowed costs are settled under the contract/order, prior to closeout (reference FAR Part 42.801.) Disallowed cost may be listed in CDW under the Contract Cost Paid report or on the Cumulative Allowable Cost Worksheet for the contract, if available.

15. Subcontract Costs Settled: The prime contractor is responsible for settling its subcontractor amounts and rates. This information should be included in the completion invoice. The CS shall ensure that the prime contractor has settled all subcontractor costs. A statement from the prime contractor certifying that subcontractor amounts and rates have been settled is sufficient for closeout.

16. Termination Docket Completed, if applicable: If the contract was under termination proceedings, the CO is to confirm that the termination action has been completed.

17. Prior Year Indirect Cost Rates Settled: The CS shall verify that indirect cost rates are settled (finalized) covering the contract/order period of performance. A non-commercial T&M or cost reimbursable contract shall not be closed until all indirect cost rates are settled or unless the quick-closeout procedure is used to settle indirect costs and rates. The CS shall check the EAS Library to see if an indirect rate audit has already been completed for the contract in question. If one cannot be found, ask the Financial Analysis Contracting Officer (FACO) responsible for that contractor if there are any indirect rate audits for that contractor. The CS can check to see if indirect rates have been finalized for the contractor in question by going to: <https://oamintra.epa.gov/node/684>. This information is updated on a quarterly basis.

18. Contract Audit Completed:

In addition to the final indirect rate audits mentioned above, attached to those audits may also be a Cumulative Allowable Cost Worksheet (CACW) that lists all audited costs for open flexibly-priced contracts. The final indirect rate audit will note if there is a CACW attached. If so, but it is not attached, ask the FACO. Of note on these audits is a column that states, “Ready to Close.” If there is a “Y” (for yes), the contractor has indicated the contract, for that time-frame (or job), is physically complete. If the column states “Closed”, it doesn’t necessarily mean the contract is closed. This information is provided by the contractor and needs to be verified with EPA records. Some audits may have a column labeled “Disallowed” or “Less Contract Limitations”. The explanation of these columns is listed on the bottom of the worksheet. You will need to decide to allow or not. These audits also might not have taken into consideration any indirect rate ceilings in the contract. Sometimes on the final indirect rate agreement, it will annotate if a particular contract had an indirect rate ceiling.

The audit figures may be used to determine if funds are owed the contractor or due the

Government and should be compared to submitted final invoices. The audit figures should also be compared to what was paid per period of the contract by printing out the Contract Cost Balance Inquiry report from CDW. The audit report is only concerned with costs, not fee (some do list fee or fee hours as a separate item).

If only part of the contract has been audited based on final indirect rates, those results may also be used especially if the quick closeout procedure is being used.

Note: The CACW is not perfect and should be reviewed and compared to what is listed in the audit and what was actually paid. Large discrepancies may be found if the audit did not include subcontractors (separate assist audits) or if the audit agency changed for that contractor. Contractors may also request payment less than what is on the worksheet. Due diligence is needed when reviewing these reports. FACO guidance may be needed.

19. Contractor's Closing Statement/Completion Voucher Submitted

Within 120 days after settlement of the final annual indirect cost rates **for all years of a physically complete contract**, the contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request (FAR 52.216-7(d)(5)).

Sometimes the contractor will provide this information as a working spreadsheet. However, to be useful for reconciliation with our accounting system, the information on the spreadsheet should be broken down by period of performance and fiscal year, within the period of performance. Also, due to our system, the completion invoice must be for each period of performance and not the entire contract, if funds are owed or credit is due.

The contractor may request an extension to the 120 days, if done so in writing. The CO may approve, in writing, the extension of the 120 days after considering whether there are extenuating circumstances, such as the following (FAR 42.705):

- (a) Pending closeout of subcontracts awaiting Government audit.
- (b) Pending contractor, subcontractor, or Government claims.
- (c) Delays in the disposition of Government property.
- (d) Delays in contract reconciliation.
- (e) Any other pertinent factors.

If the contractor fails to submit a completion invoice or voucher within the time specified above, the CO may:

- (a) Determine the amounts due to the contractor under the contract; and
- (b) Record this determination in a unilateral modification to the contract.

This determination constitutes the final decision of the CO, in accordance with the Disputes clause.

Note: The contractor is required to submit a final invoice/voucher within 60 days after settlement of the final indirect cost rates for each fiscal year that has been finalized by the cognizant audit agency. (There can be several final invoices or adjustment invoices for one contract depending on the period of performance). A completion invoice/voucher is the last voucher for the contract and final payment is made from this voucher. Due to EPA's payment system, it may be necessary to have several completion vouchers per period of performance, as opposed to one.

Also, contractors mix the terminology of these invoices. Some will send completion invoices first, followed by a final invoice. Some will send final invoices and no completion invoice. Whatever, the contractor calls them, they should show the period of performance of the period being invoiced, the final rates that were applied, the adjustments that were made based on the final rates, and funds owed or credits due as appropriate. It is highly recommended that the contractor identifies the type of invoice in the invoice number (usually adding a "C" or "F" after the number), so it is easily identifiable in the CDW payments record.

For T&M contracts, the indirect rates would apply to the materials portion of costs (not the fixed rates). The contractor is required to submit completion invoices for these types of contracts. Again, contractors will mix the terminology. They also may submit spreadsheets as stated above for reconciliation and agreement prior to the completion invoice(s). This is helpful on contracts with many task orders. Prior to invoice approval, the CO should compare what was submitted to any available cumulative allowable cost audit, which is normally attached to the final indirect rate audits.

At this point, the CO may elect to approve the completion voucher or ask for the contract to be audited, prior to final payment.

20. Optional Invoice Audit Completed: At any time or times before final payment, the CO may have the contractor's invoices and statement of costs audited and any adjustments made accordingly (FAR 52.216-7(g)). Situations where this may be warranted are in large/complex contracts, large contracts that may have had an unusual amount of suspended/disallowed costs or revised invoices, or with contractors that have been identified in previous reviews to have questionable practices. The Financial Analysis and Oversight Branch (FAOB) should be consulted as to information regarding the contractor's history on audits. The CO will determine if an audit is warranted and make the request for an audit to FAOB.

21. Final Payment/Credit:

Funds Due the Contractor:

Upon approval of a completion invoice or voucher submitted by the contractor to the CO, and upon the contractor's compliance with all terms of the contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any), not previously paid. As stated above, under Optional Invoice Audit, the Government may request an audit on the completion voucher before final payment, depending on whether there is a high risk or

low risk to the Government. If the CO approves the completion invoice, but before final payment, the contractor and each assignee whose assignment is in affect at the time of final payment, must submit with its completion voucher (FAR 52.216-7):

- (a) A Contractor's Release,
- (b) A Contractor's Assignment of Refunds, Rebates and Credits, and
- (c) Any other required closing documents not previously submitted.

The CS shall review the final voucher package to ensure all closing documents have been obtained and are properly executed. The CS shall immediately contact the contractor if required documents are missing or improperly completed. All forms may be submitted via email. See Attachment 4.8.1-B Paying Contractor Invoices, on processing funds due the contractor. Do not close the contract until the contractor has been paid.

NOTE: The Contracting Officer/Contract Specialist should wait until the invoice has been paid before requesting the release to ensure it matches what is in CDW. RTP will not close the contract if the release form and the CDW account balance report do not match.

Funds Due the Government:

If it is determined that the contractor is indebted to the Government, see Attachment 4.8.1-B Processing Vendor Credits. The CS will notify the contractor as to the proper procedure or refer the contractor to the appropriate RTP point of contact. A copy of the check shall be sent to the CS along with the Contractor's Release and the Rebates form. The CS will confirm when payment has been received. The contract shall not be closed until payment has been received.

22. The CS shall complete the Contract Closeout Checklist, Contract Completion Statement, and Records Retirement Notice. Submit these and the following documents to the CO for review and signature. This is the contract closeout packet in this order:

- (a) Contract Completion Statement.
- (b) Contractor's Release (and each assignee, as applicable)
- (c) Contractor's Assignment of Refunds, Rebates, Credits (and each assignee, as applicable)
- (d) Contract Closeout Checklist.
- (e) Any other documents needed for closeout (i.e. property, patent, COR e-mail confirmation of actions, copy of check, etc.), as applicable.
- (f) Records Retirement Notice.

23. Scan and upload the completed documents to the base contract supporting file in EAS in a folder called "Closeout". Label this scanned file: "Contract Closeout Packet" or similar label. Update the EAS Contract Closeout Module fields (not the on-line checklist) with the required information and closeout the contract. Do not fill in the destruction date.

24. E-mail the packet to RTP Finance Center-Obligations, and copy the CO, for closeout in the financial system. RTP will update the Contract Data information in CDW to reflect the contract as closed (with CO name and date closed), normally in 3-5 days. If that has not happened, notify RTP.

25. If a physical file is available, put the closeout packet in the file under a tab labeled "Closeout". Ensure that the Records Retirement Notice is on top of the closeout tab in the file, readily available for the file clerk. In addition, write on the outside of all the main contract files "Closed" and the date the contract was closed. The file should be brought to the area designated for closed files.

Claims:

In accordance with FAR 52.216-7(h)(ii)(B) and (C), claims can be submitted as stated in the clause within six years, in writing, from the date of the release form or notice of final payment date, whichever is earlier.

In accordance with FAR 33.206, this period does not apply to contracts awarded prior to October 1, 1995. Refer to the contract to see if any clauses were included referencing claims. If not, technically, the contract can remain open indefinitely. See OGC to determine if we are liable for claims.

In accordance with FAR 52.233-1(c) Disputes, a voucher, invoice, or other routine request for payment that is not in dispute when submitted, is not a claim under the Act. However, it may be converted to a claim, by written notice to the CO, as provided in FAR 33.206(a).

(D) Retiring Closed Contracts

Once a contract is closed, the physical file should be stored in the area designated for closed contracts. In accordance with FAR Part 4.805 "Storage, Handling, and Contract Files", contracts and related records or documents, including successful and unsuccessful proposals, shall be retained for six years after final payment. However, in accordance with [EPA Records Retention Schedule 1004, Acquisition and Contracts](#), contract files shall be kept six years from *file closure*. Files should be destroyed after the 6-year timeframe unless there are special schedules (i.e. Superfund).

[EPA Records Retention Schedule 020, Contract Management Records—Superfund Site-Specific](#), should be consulted as to the records retention for these files.

Schedules 1004 and 020 can be found on the Records Management website:
<http://intranet.epa.gov/records/schedule/index.html>

In addition to the above, a contract may be subject to litigation hold. In these cases, the contract cannot be destroyed, regardless of the records schedule, until the hold is lifted.

To determine if your contract is under a litigation hold, click this link <http://litholdandcollect.epa.gov/portal>. The information more than likely will not list the contract number, but the legal person assigned to the action is listed towards the end of the notice and can be contacted to find out that information.

ATTACHMENTS/APPENDICES:

4.8.1.A – Paying Contractor Invoices

4.8.1.B- Processing Vendor Credits

4.8.1.C- Quick Closeout Procedure

4.8.1.D - SAMPLE LETTER—COMMERCIAL AND NON-COMMERCIAL CONTRACTS
THAT DO NOT HAVE INDIRECT RATES (ABOVE THE SAT)

4.8.1.E - SAMPLE LETTER—COST AND NON-COMMERCIAL T&M CONTRACTS

4.8.1.F - SAMPLE LETTER—INTERIM CLOSEOUT COST CONTRACT

4.8.1.G - CONTRACTOR CLOSEOUT CERTIFICATION

4.8.1.H - CONTRACT COMPLETION STATEMENT

4.8.1-I - CONTRACT RECORDS RETIREMENT NOTICE

4.8.1-J – CHECKLIST FOR CONTRACT CLOSEOUT

ATTACHMENT 4.8.1-A PAYING CONTRACTOR INVOICES

In order to pay contractor invoices, you must determine the funding lines that were used on the contract for the period of performance in question and if these funds are “expired” funds, “cancelled” funds, or “no-year” funds.

EPA normally has 2-year funds available for obligations. Once the fiscal years have passed, those funds are considered “expired.” New obligations cannot be made with those funds, but they can still be used to pay invoices for work previously incurred, for the next seven years. After those seven years, the funds are considered “cancelled” and need to be reprogrammed to pay invoices. No-year funds never expire.

For expired funds, the CO will process a “Req for Mod” in EAS (expired funds overrun). After identifying the line of accounting the CO wants to use to pay the invoice for that POP, s/he needs to increase that line in the amount needed. Process the resulting modification accordingly and send to RTP. Ensure the mod states expired funds are being used.

For no-year funds, the CO would follow the same process as for expired funds. If a large amount of funds is needed (over \$50,000), inform the Office of Budget so that they are aware they will be seeing a large charge in their account. For much larger amounts, it may be helpful to inquire if funds are available for the fiscal year in question. Ensure the mod states no-year funds are being used.

For cancelled funds, the CO will process a “Req for Mod” in EAS as well (paying on cancelled funds). Before the mod can be processed, the CO needs to request “M” account (fiduciary reprogrammed funds) from the program office. The CO will provide the program with the line(s) of accounting s/he needs to have reprogrammed and the dollar amount. The program will provide, via email normally, the reprogrammed accounting string (reprogrammed to budget code 95). In order for the program to get these funds, they need to send a memorandum to the Office of Budget. A sample of a memorandum is shown. Also shown, is information on how to process a Req for Mod in EAS for cancelled funds. The process is similar for expired funds. Ensure the mod states cancelled funds (“M” account funds) are being used. Both the memorandum and EAS steps were provided by the Office of Budget.

Shown below is an example of when funds are considered Available (Avail), Expired (Exp), or Cancelled (Canc).

Timeline for Budget Fiscal Year 2007/2008 Funds

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

Avail	Avail	Exp	Exp	Exp	Exp	Exp	Exp	Exp	Canc
2007	2008	2009	2010	2011	2012	2013	2014	2015	2016

SAMPLE - MEMORANDUM

SUBJECT: Request for M Account Payment

FROM: Financial Management Officer or Obligating Official

TO: Office of Budget

In accordance with the Office of the Comptroller Policy Announcement No. 91-11, I certify that an Invoice/Financial Status Report has been received and that payment is ready to be made for the following previously cancelled obligation:

1. Original Program Title & Program Element or Program Results Code:
2. *Program Results Code (PRC) for Funds to be Issued (*Current year equivalent to original account info*):
3. Original Appropriation:
4. Original Account Number:
5. Original Obligating Document Number:
6. Original Allowance Holder:
7. Four-Digit Finance Object Class:
8. Vendor/Grantee:
9. Grants: Budget Period: Project Period:
10. Date Invoice/FSR Received:
11. Amount of Requested Funds:
(This should only represent funds required from years that have been cancelled).
12. Anticipated Date of Obligation:
13. Basis for Payment:

SFO Contact:

HQ Use Only

Phone:

Issued by:
Date: _____

M Account Reprogramming Process

When Offices receive an invoice on a contract that is using cancelled funds (multi-year funds appropriated more than seven years ago), they must submit an “M” Account Reprogramming Request Form to the Office of Budget (OB). The Office of Budget, using current year funds in a reserve account, reprograms funds to a special accounting string where they can then be used to make an obligation in EAS.

Key information to include on the request form:

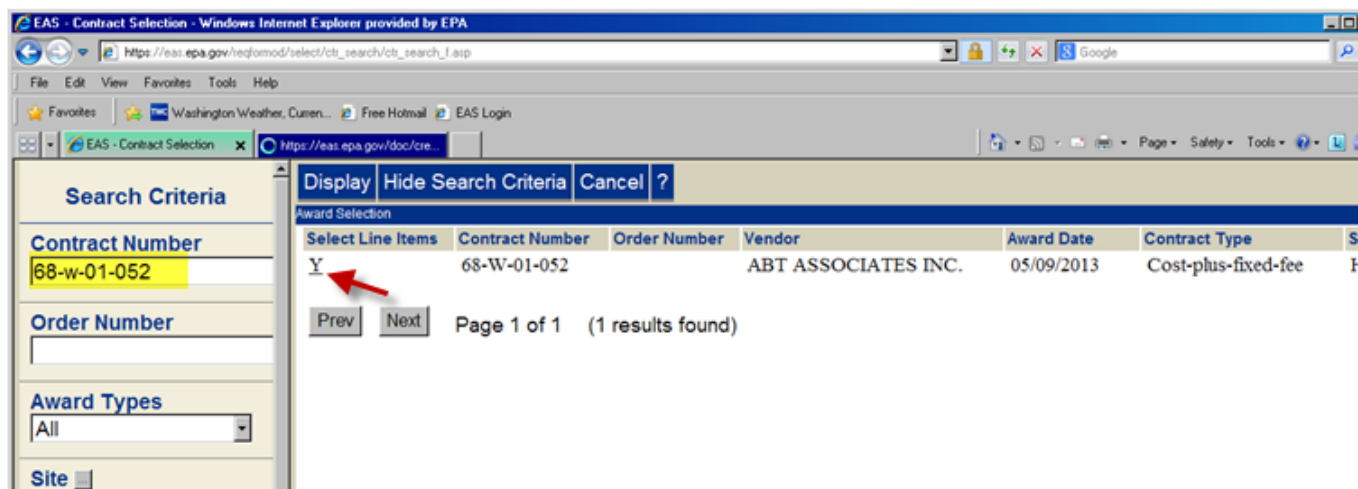
1. The original and current year equivalent Program Results Code (PRC)
 - a. There is a good chance, since the initial payment was made more than seven years ago, that the initial PRC is no longer valid. In order to process your request in Compass, we will need the current year’s equivalent.
 - i. The program office responsible for the contract should have the PRCs.
2. Anticipated date of obligation
 - a. The Office of Budget expects a quick turnaround from when the funds are reprogrammed to when they are obligated. If you have not obligated these funds, they are in danger of being swept up as the end of the fiscal year approaches. If this happens, the CO will need to begin the process all over again.
 - i. OB monitors the accounts to ensure the funds are obligated.
3. Basis for Payment
 - a. A majority of “M” account reprogramming cross Congressional controlled limits. Thus, they may be reviewed by OMB and the Hill. Please provide a detailed justification that includes what the funds are exactly being used for.

After the Office of Budget reviews the request for the proper information, they will process the reprogramming in Compass. Below is an example of a ‘To’ line. The accounting dimensions on the ‘To’ line should be used in the EAS Req for Mod.

2 To	\$41,540.30	0.000000	2012	2013	B		95	95		201B53	WHHP	37	Posted
------	-------------	----------	------	------	---	--	----	----	--	--------	------	----	--------

When the Office of Budget notifies the requestor that the funds are ready to be obligated, he or she must take the following action in EAS: Create a new Req for Mod in EAS

- a. Link the old contract to the Req for Mod
 - i. This is done by searching and selecting the previous contract number.



- b. Once the previous contract has been selected, the user must select a reason for the Req for Mod.
 - i. There is a drop down box titled 'Req for Mod Reasons'
 1. Select 'Paying on Cancelled funds'
 2. This will allow you to use the accounting string OB provides

EAS - Requisition - Detail - Windows Internet Explorer provided by EPA

https://eas.epa.gov/reqformod/general/detail/gen_detail_f.asp

File Edit View Favorites Tools Help

Washington Weather, Cumen... Free Hotmail EAS Login

EAS - Requisition - Detail x https://eas.epa.gov/doc/cie...

EAS

Requisition for Modification Information

Requisition Number: PR-HPOD-13-00349 Stage: Requisition Number of Items: 1

Version: BASE-In Progress Net View: Off Total Amount: \$0.00

Original Document: 68-W-01-052 Commitment: \$0.00

General Information

Owner: [Redacted]

Originating Office: HPOD [Edit]

Requisition Date: 08/13/2013

Requisitioner: [Redacted]

Buyer: JBOWMA02

Buyer Assign Date: (None)

Requisition Received Date: [Redacted]

Requisition Released Date: (None)

Source PPT Name: (None)

Primary Product / Service Code: R408

Req for Mod Reason: Paying on Cancelled Funds

Includes Recovery Act Funds: [Redacted]

Accounting Change

Moving Funds between Options

Moving Funds between Tasks

Expired Funds Overrun

Paying on Cancelled Funds

Expired Funds Overrun for Ratification

- c. Enter all appropriate accounting information
 - i. For the BFY and EFY use the last two digits of the year
 1. i.e. 2012 = 12 and 2013 = 13
 - ii. Appropriation will be either B for Environment Programs and Management (EPM) or C for Science and Technology (S&T)
 - iii. PRC and BOC are provided by OB

EAS - Item - Accounting - Detail - Windows Internet Explorer provided by EPA

https://eas.epa.gov/shipto/accounting/detail/acct_detail.asp?type=

File Edit View Favorites Tools Help

Favorites Washington Weather, Curren... Free Hotmail EAS Login

EAS - Item - Accounting - Detail

EAS

Click Submit to save your data.

Requisition for Modification Information

Requisition for Modification Number: PR-HPOD-13-00349 Ship To Code: Quantit
Version: BASE Item: 0100 Ship To Valu

Accounting Information Detail

Calculate Submit Cancel

Accounting Information

Select Accounting Code: ...

Beginning Fiscal Year 12

Ending Fiscal Year 13

Fund (Appropriation) B

Budget Organization 95

Program (PRC) 102A59

Budget (BOC) 2505

Job # (Site/Project)

- d. Treasury Account codes – which is optional
 - a. Agency Identifier
 - i. = 68
 - b. Main Account
 - i. = 0108 for B (EPM)
 - ii. = 0107 for C (S&T)
 - c. Sub Account
 - i. Leave blank

2. Process Modification as normal

a. In the comments field:

- i. Be sure to include the DCNs in the comments field.
 1. The program office responsible for the contract should have the DCNs or similar DCNs from when the first payment was made.
- ii. Specify that the mod is for “M” account funding to pay for trailing invoice, rate adjustments, etc.

3. Validation and Submitting

In some cases, the req for mod may not validate in EAS, for a variety of reasons.

If this happens, create an EAS ticket via the help desk to have it pushed through.

Recommended:

The CO should have Finance review the complete line of accounting (LOA) before they proceed to award the req for mod. EAS will successfully validate LOA's that may be inappropriate. Conceivably the CO could complete the entire mod and pass EAS validations, and then it will be rejected by Finance.

ATTACHMENT 4.8.1-B
PROCESSING VENDOR CREDITS

The following has been provided by RTP as the current general process for credit invoices.

Vendors have 2 options for refunding money to EPA:

- Option 1. Vendor can submit only a credit invoice & we will offset against other payments vendor may receive in the near future (within 30 days – if not within 30 days, use Option 2). (Use Step 1 only) If you find that the funding is non-superfund and older than 7 years, please let me know. The vendor will need to submit a check (if not already).
- Option 2. Vendor can submit a credit invoice & check (Use Step 1 & 2)

Note: Use Step 1 only for offset option (pay against another payment – no payment / check needed), or use both steps if payment / check is being sent.

Please create a credit invoice with dates that represent the Contract, task order, and funding period (how it was originally paid). Combined invoices or funding periods are not acceptable.

Step 1: Please send your Credit Voucher / Invoice /1034 to RTP-FC Address or via email submission (if authorized).

Add to your invoice (“Please Offset Credit” or “Payment will be Submitted” and add copy of check).

RTP-FMC address:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27703

Step 2: Please send your payment by one of three options:

Add to Memo: Voucher Number: XXX; Contract/DO Number: XXX

1. ACH Credit Payment Method (Add “Payment will be sent through ACH” on submitted invoice): This option is currently not available.

2. Check Payment Method (Add copy of check to submitted invoice):
Send original check (payable to U.S. Environmental Protection Agency) to:

RTP-FMC address:
US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27703

3. Payment via Fedex, Airborne, DHL, and UPS (Add copy of check to submitted invoice):

RTP-FMC address:
US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27703

Invoice Payment Section

EPA - RTP

919 541-5178 Office
919 685-3478 Fax (Personal)
Wednesday & Friday - Alternate Work Location

Customer Service

Email: ContractPaymentInfo@epa.gov
Office: 919-541-1148
Fax: 919-541-4860 (Call before faxing)

VERIFYING VENDOR CHECK HAS BEEN RECEIVED

Perform the following steps in the Compass Data Warehouse to verify if a check has been received.

1. Go to the Compass Data Warehouse page.
2. On the left side select Collections Inquiry (if inquiring for checks received prior to 2011, use the IFMS Historical Queries from the top left of the screen and then Collections Inquiry).
3. Enter the date range, starting with the date of the check, then enter the amount or range of amounts and click submit. Other search criteria can be entered to narrow the search if it is available.
4. Search the results for your transaction

ATTACHMENT 4.8.1-C QUICK CLOSEOUT PROCEDURE

Quick Closeout Procedure

If all indirect rates for the contractor have not been finalized, then quick-closeout procedure (FAR 42.708) is an option. Quick-closeout procedure allows for the negotiation of final indirect rates and direct and indirect costs.

FAR 42.708 Quick-Closeout Procedure

(a) The contracting officer responsible for contract closeout shall negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed, in advance of the determination of final indirect rates set forth in FAR [42.705](#), if

- (1) The contract, task order, or delivery order is physically complete;
- (2) The amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order is relatively insignificant. Cost amounts will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order does not exceed the lesser of—
 - (i) \$1,000,000; or
 - (ii) 10 percent of the total contract, task order, or delivery order amount;
- (3) The contracting officer performs a risk assessment and determines that the use of the quick-closeout procedure is appropriate. The risk assessment shall include—
 - (i) Consideration of the contractor's accounting, estimating, and purchasing systems;
 - (ii) Other concerns of the cognizant contract auditors; and
 - (iii) Any other pertinent information, such as, documented history of Federal Government approved indirect cost rate agreements, changes to contractor's rate structure, volatility of rate fluctuations during affected periods, mergers or acquisitions, special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under cost reimbursement or time-and-materials contracts; and
- (4) Agreement can be reached on a reasonable estimate of allocable dollars.

Determination of final indirect costs and rates under these procedures shall be final only for the contract it covers.

The CS will perform the research and the CO the risk analysis in accordance with the above to determine if quick closeout can be used. The CS will check the EAS Library to see if final indirect rates and CACW audits were performed on the contract in question and verify settled amounts. If audits cannot be found, the CS shall ask the responsible FACO to verify same and also to obtain input as to the financial viability of the contractor per the risk assessment questions above. The CS will notify the CO of the findings. After review of the findings and the risk analysis, the CO will determine if quick closeout is applicable. If applicable, the CO will notify the contractor and recommend the use of the quick closeout procedure (see sample letter below). Once the rates and costs have been agreed to and the closeout processed, the CO will notify the Audit Program Management Team that the contract was closed using quick-closeout procedure. This will ensure the Audit Management Team does not request audits for the contract in question. A sample Determination and Findings is shown.

SAMPLE - Determination & Findings
Quick Closeout: Risk Assessment

BACKGROUND

In accordance with FAR Part 42.708, the U.S. Environmental Protection Agency (EPA), intends to closeout Contract No. _____ with Contractor name _____ using quick closeout procedures after performing the risk assessment described below.

FINDINGS

1. The contract is physically complete.
2. The unsettled direct and indirect costs to be allocated under the contract, task order, delivery order are relatively insignificant (*insert amount of unsettled direct and indirect costs and percentage*).
3. The contractor has an approved accounting system, estimating system, and purchasing system (*include only what applies and expound on this*).
4. Reports from the cognizant audit agency shows no adverse or high-risk elements associated with this contractor (*anything specific?*).
5. Additional input from the cognizant EPA FACO *did or did not* reveal any adverse information or high-risk elements associated with this contractor (*Expound as necessary citing any additional information as it relates to FAR 42.708(3)(iii) quick closeout*).
6. Ceiling indirect cost rates established in the contract, if applicable, are consistent with FAR 42.707(c)(1) and (2).
7. As shown below, there has been very little variation in the contractor's indirect rates from year to year. For example, when examining the billing rates prior to a fiscal year, when compared to the revised or final rates for that fiscal year, the rates are stable and accurate (*fill in whether the rates compared are the final or revised billing rates as applicable*):

<u>Cost Center</u>	<u>Billing FYXX</u>	<u>Revised FYXX</u>	<u>Billing FYXX</u>	<u>Revised FYXX</u>	<u>Billing FYXX</u>	<u>Revised FYXX</u>	<u>Billing FYXX</u>	<u>Revised FYXX</u>
Overhead								
Subs								
Material Handling								
G&A								
Other								

The above rates reflect those indirect rates for the contract period of performance.

DETERMINATION

Based upon the findings above, it is determined that quick closeout procedures *are/are not* appropriate for closeout of the above contract, task order, or delivery order because
_____.

Contracting Officer

Date

SAMPLE LETTER--QUICK CLOSEOUT

Date

Contractor's Name
Contractor's Address

Attn.: Name, Title of Contractor's Point of Contact

Subject: Quick Closeout of Contract _____

Dear _____,

This letter is to capture our agreement to proceed with quick-closeout procedures in accordance with FAR Part 42.708 for the above contract. All rates for this contract have been finalized with the exception of FY _____. After review of the previous indirect rate history, we have agreed to use the following rates for the unsettled costs of this contract.

Full Time Overhead	XX.XX%
Part Time Overhead	XX.XX%
Material Handling	X.XX%
G&A	XX.XX%
Others as applicable	XX.XX%

It is understood that these rates are only applicable to the above contract.

It is estimated that the unsettled direct and indirect costs is approximately \$ _____. This represents X% of the contract value which is the lesser of \$1,000,000 or 10% of the contract value required by the FAR.

If you have any questions, please feel free to contact me at _____ or _____@epa.gov.

Sincerely,

Signature Block

APPENDIX 4.8.1-D
SAMPLE LETTER—COMMERCIAL AND NON-COMMERCIAL CONTRACTS
THAT DO NOT HAVE INDIRECT RATES (ABOVE THE SAT)

Insert Date

Insert Contractor Address

Subject: Contract Number _____

Dear _____,

The United States Environmental Protection Agency (EPA) considers the above-referenced contract to be complete and ready for closeout. According to EPA records, the cumulative amount paid on this contract is \$ _____. To facilitate closeout of the contract, it is required that you sign the attached “Contractor’s Release” (EPA Form 1900-6) reflecting the total of amounts paid and payable of \$ _____ with “None” or “0” **entered in each of the blanks** under Amounts Claimed.

If there was an assignment under this contract when final payment was made, then each assignee must also sign a release form (the form will be provided if needed).

Please execute a copy of this document, **to include witnesses and the corporate seal, as applicable**, to me within the next fifteen (15) business days from the date of this letter (e-mail of .pdf document is acceptable).

If the above does not match your records or if you have any questions regarding the closeout of this contract, please contact me at 202-564-_____ or e-mail at _____@epa.gov. Please note the Government is prepared to make final payment if funds are due.

Sincerely,

Signature Block

APPENDIX 4.8.1-E
SAMPLE LETTER—COST AND NON-COMMERCIAL T&M CONTRACTS

Insert Date

Insert Contractor Name/Address

Subject: Closeout of Contract Number _____

Dear _____,

The United States Environmental Protection Agency (EPA) shows the above-referenced contract to be physically complete and all indirect rates finalized. In accordance with FAR 52.216-7(d), Allowable Cost and Payment clause:

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

In accordance with the above, please submit your completion voucher(s) reflecting the final rates for each year of the contract's period of performance, their application to each cost center per each year's period of performance, and any adjustments (under billings/over billings) per each year's period of performance if not previously paid (e.g. base year and each option period). If there were two fiscal years applicable during the period of performance, those costs will need to be broken out by fiscal year and the final rates applied. If this contract included a fee, the fee earned shall be listed separately per each period of performance.

I will work with you for any other administrative actions that need to be cleared regarding this closeout (e.g. property, patents, royalties, etc). After review and approval of your submission, I will request a Contractor's Release form and a Refund, Rebates, and Credits form. This requirement would also apply to assignees as well if assignment was in affect at the time of final payment (the forms will be supplied if needed).

If you have any questions regarding the closeout of this contract, please contact me at 202-564-____ or e-mail at _____@epa.gov.

Sincerely,

Signature Block

APPENDIX 4.8.1-F
SAMPLE LETTER—INTERIM CLOSEOUT COST CONTRACT

Insert Date

Insert Contractor Name/Address

Subject: Interim Closeout of Contract Number _____

Dear _____.

Our records indicate that the above cost reimbursement contract ended on _____. In order to facilitate the formal closeout of this contract, you are required to fill out the attached form and return it to me.

Also, in accordance with FAR 52.216-7 (Allowable Cost and Payment clause), you are reminded to submit adjustment or final vouchers once your fiscal year indirect rates are finalized by your cognizant audit agency. If you have previously received finalized rates but have not submitted your adjustment or final voucher, please submit those to me for review and payment, as applicable. Once all indirect rates are finalized, you must submit a completion voucher along with a Contractor's Release Form and a Contractor's Assignment of Refunds, Rebates, and Credits Form. I will work with you on final closeout when all rates have been finalized.

Please have the attached form and any final invoices not previously submitted to me within the next 30 days. If you have any questions, please feel free to call me at 202-564-_____ or email me at _____.

Sincerely,

Signature Block

Attachment:
Contractor Closeout Certification Form

APPENDIX 4.8.1-G
CONTRACTOR CLOSEOUT CERTIFICATION

Contract Number:

Contractor:

1. Classified Material has been returned.

Yes _____ No _____ Not Applicable _____

2. A final patent report has been submitted, if applicable. If FAR 52.227-13 was included in the contract, then EPA Form 3340-4 is required (or equivalent), even for a negative report.

Yes _____ No _____ Not Applicable _____

3. A final royalty report has been submitted.

Yes _____ No _____ Not Applicable _____

4. Has all property been removed from the contract and a final property report submitted.

Yes _____ No _____ Not Applicable _____

5. Have all subcontractor costs been settled.

Yes _____ No _____ Not Applicable _____

Contractor Comments:

Signature of Authorized Contractor Representative _____

Printed Name _____

Title _____

Date _____

APPENDIX 4.8.1-H
CONTRACT COMPLETION STATEMENT

1. Contract Administration Office Name and Address:

2. Contracting Office Name and address:

☐ CAD ☐ HQAD: *HPOD*____*SRRPOD*____ ☐ ITAD
Cincinnati, OH Washington, DC RTP, NC

Regions: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10

3. Contract Number:

4. Last Modification Number:

5. Last Call or Order Number:

6. Contractor Name and Address:

7. Dollar Amount of Excess Funds:
Disposition: Deobligation modification processed if excess funds.

8. Final Voucher Number and Final Payment Date:

9. Total Amount Paid:

All required contract administration actions have been fully and satisfactorily accomplished and this contract can now be closed.

Contracting Officer Name: _____

Contracting Officer Signature: _____

Date: _____

Revised

APPENDIX 4.8.1-I
CONTRACT RECORDS RETIREMENT NOTICE

SUBJECT: EPA Contract # [Click here to enter text.](#) with [Click here to enter text.](#)

TO: Contract File, EAS, RTP

1. The contract is considered physically and administratively complete.
2. Date Contract Closed in EAS: [Click here to enter text.](#)
3. Final Payment Date: [Click here to enter text.](#)
4. Date Contractor's Release Signed (if applicable): [Click here to enter text.](#)
5. Date Solicitation Cancelled: [Click here to enter text.](#)
6. The official file of the Contracting Officer (CO) should be disposed of as follows per FAR 4.805, [EPA Records Schedule 1004](#), and [EPA Records Retention Schedule 020](#).

Document	Retention Period
<input type="checkbox"/> All contracts (and related records or documents, including successful and unsuccessful proposals) to include actions below the simplified acquisition threshold and construction.	6 years after file closure.
<input type="checkbox"/> Contractor's payrolls submitted under construction contracts in accordance with Department of Labor regulations (29 CFR 5.5(a)(3)), with related certifications, anti-kickback affidavits, and other related records.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date.
<input type="checkbox"/> Solicited/Unsolicited proposals filed separately from contract files.	6 years after file closure.
<input type="checkbox"/> Cancelled solicitation files.	6 years after date of cancellation.

- ☐ NOTE: If this contract is on litigation hold, check this box. Contracts under litigation hold shall not be destroyed unless the litigation hold is lifted by OGC. To determine if your contract is under a litigation hold, click this link <http://litholdandcollect.epa.gov/portal>. The information more than likely will not

list the contract number, but the legal person assigned to the action is listed towards the end of the notice and can be contacted to find out that information.

HQAD (Superfund) & Regions

- ☐ This contract **is not** site specific and follows the same retention schedule as listed above per EPA Records Schedule 1004 and FAR 4.805. CO to check this box and the document box above. Contract level COR is responsible for determining whether the contract is covered by Schedule 1004 or the site-specific schedule below (Schedule 020).
- ☐ This contract **is** site specific (Superfund, Brownfields, and Oil Spill site-specific activities per EPA Records Schedule 020).
- ☐ Unknown

NOTE: Schedule 020 is in the process of being superseded by Schedule 1036, which has not been finalized as of yet. Per Records Management guidance, the old schedule records retention destruction and transfer guidance still stands until the new schedule is finalized.

Submitted by:

Contracting Officer Name

Signature

Date

Rev. 03/22/19

ATTACHMENT 4.8.1-J

CHECKLIST FOR CONTRACT CLOSEOUT

CONTRACTOR Click here to enter text.		CONTRACT TYPE Click here to enter text.		CONTRACT NUMBER Click here to enter text.		CONTRACT PERIOD OF PERFORMANCE Click here to enter text.			
						DATE PHYSICALLY COMPLETE			
CONTRACT OBLIGATED AMOUNT Click here to enter text.		For HQAD (SF) & Regions: Site Specific? <input type="checkbox"/> Not Site Specific? <input type="checkbox"/> Unknown <input type="checkbox"/>		For Records Retention only: Is this contract under litigation hold? Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> (CO/COR would have received official notification from OGC) They can check this link: http://litholdandcollect.epa.gov/portal					
ACTION		YES	N/A	Note	ACTION		YES	N/A	Note
Obtained Physical Record or EAS Record and CDW Records		<input type="checkbox"/>	<input type="checkbox"/>		All Interim or Disallowed Costs Settled		<input type="checkbox"/>	<input type="checkbox"/>	If contract has FAR clause 52.242-1
Verified: Period of Performance has Expired, All deliverables/services have been received and accepted.		<input type="checkbox"/>	<input type="checkbox"/>	Physically Complete FAR 4.804-4	Contract Audit is Completed		<input type="checkbox"/>	<input type="checkbox"/>	EAS
Verified: No Outstanding Claims or Disputes, No Pending Termination.		<input type="checkbox"/>	<input type="checkbox"/>	Physically Complete FAR 4.804-1	Quick Closeout		<input type="checkbox"/>	<input type="checkbox"/>	If cost reimb. contract, T&M non-comm
Disposition of Classified Material Completed		<input type="checkbox"/>	<input type="checkbox"/>						
Final Patent Report of Inventions and Subcontracts Submitted EPA Form 3340-4 if 52.227-13 used		<input type="checkbox"/>	<input type="checkbox"/>	If FAR Clause 52.227-11 or 52.227-13 in contract					
Final Royalty Report Cleared		<input type="checkbox"/>	<input type="checkbox"/>	If contract has FAR Clause 52.227-9	Completion/Final Voucher Submitted		<input type="checkbox"/>	<input type="checkbox"/>	FAR 52.212-4 Alt I or 52.216-7
No Outstanding Value Engineering Change Proposal		<input type="checkbox"/>	<input type="checkbox"/>	If contract has FAR Clause 52.248-1, -2, or -3	Contractor's closing Statement = Contractor's Release Submitted EPA Form 1900-6 Contractor's Release		<input type="checkbox"/>	<input type="checkbox"/>	All contracts over the SAT.
Plant Clearance Report Received		<input type="checkbox"/>	<input type="checkbox"/>	If Plant Clearance Officer assigned	Completed Form EPA Form 1900-5 Contractor's Assignment of Refunds, Rebates, Credits		<input type="checkbox"/>	<input type="checkbox"/>	If contract has FAR Clause 52.216-7
Final Property Clearance Received		<input type="checkbox"/>	<input type="checkbox"/>	If contract has FAR Clause 52.245-1 or EPAAR clause	Assignee's release/rebates form, as applicable, if assignment in effect at the time of final payment EPA Form 1900-3, EPA Form 1900-4		<input type="checkbox"/>	<input type="checkbox"/>	FAR 52.212-4 Alt I or 52.216-7
Termination Docket is Completed		<input type="checkbox"/>	<input type="checkbox"/>		Excess Funds Removed via Modification		<input type="checkbox"/>	<input type="checkbox"/>	
Price Revision is Completed		<input type="checkbox"/>	<input type="checkbox"/>	If contract has FAR Clause 52.216-4,-5,-6 -10, -16, or -17	Contract Modification Completed to add funds IAW completion/final voucher		<input type="checkbox"/>	<input type="checkbox"/>	
All Subcontracts Settled by Prime Contractor		<input type="checkbox"/>	<input type="checkbox"/>	Statement from contractor is acceptable	Closeout Completion Statement, Records Retirement Notice Signed by		<input type="checkbox"/>	<input type="checkbox"/>	

				the Closeout CO.			
Prior Year Indirect Cost Rates Settled	<input type="checkbox"/>	<input type="checkbox"/>	EAS	Contract Closeout Narrative (include below)	<input type="checkbox"/>	<input type="checkbox"/>	As needed
TYPED NAME AND TITLE Click here to enter text.				SIGNATURE		DATE	

CLOSEOUT NARRATIVE

(Discuss any issues arising during closeout, such as unresponsive parties, missing documentation, and the resolution of those issues. In addition, if a clause is included in the contract but was not acted upon, put “N/A on the checklist and state the outcome. For example, property clause included but no property on the contract (N/A); property clause included, property was on the contract but was removed via mod or COR/vendor certification (yes) and state same below for yes response).

Click here to enter text

Click here to enter text

Section 4.13 – Personal Identity Verification

Subsection 4.13.1 – Access Badge Requirements for On-Site Contractor Employees (July 2015)

This subsection was previously Flash Notice, “Homeland Security Presidential Directive-12 Requirements for Contractor Employees Implementation Update.”

4.13.1.1 Purpose.

The purpose of this subsection is to provide procedures for contractors to obtain local physical access badges or EPA Personal Access and Security System (EPASS) badges.

4.13.1.2 Background.

Homeland Security Presidential Directive 12 (HSPD-12), entitled “Policy for a Common Identification Standard for Federal Employees and Contractors,” calls for a mandatory, government-wide standard for the issuance of secure and reliable forms of identification to executive branch employees and employees of federal contractors for access to federally-controlled facilities and networks. Consequently, EPA initiated the EPASS project to meet the objectives and requirements of HSPD-12, as well as to ensure the security of EPA employees and personnel, facilities, and systems.

4.13.1.3 Authority/Applicability.

Procurements for services and products involving facility or system access control must be in accordance with HSPD-12 and, OMB Memorandum 06-18, “Acquisition of Products and Services for Implementation of HSPD-12.”

4.13.1.4 Definitions.

- (a) Local physical access badge – This badge is required for contractor employees needing unescorted access to EPA sites for six months or less.
- (b) EPA Personal Access and Security System (EPASS) badge – Also called a HSPD-12 smart card, this badge is required for contractor employees needing unescorted access to EPA sites for more than six months

4.13.1.5 Policy.

- (a) EPAAG Appendix 4.13.1-A entitled, “Agency Access Badge Requirements for On-site Contractor Personnel,” shall be included in all new contracts, that require contractor employees to have unescorted on-site access to an EPA-controlled facility, awarded on December 1, 2011 and after (including simplified acquisition purchase orders, orders placed against General

Services Administration Multiple Award Schedule Contracts, Government-Wide Acquisition Contracts, and Multi-Agency Contracts).

(b) Work cannot begin on a contract requiring unescorted physical access to an EPA-controlled office or facility until after the contractor employee investigation process¹ has been initiated. This requirement does not apply to off-site work such as Brownfield and Superfund sites.

(c) Prior to starting work at an EPA facility, contractors must submit all applicable paperwork, as identified in the contract, and have that paperwork reviewed and approved by the EPA Personnel Security Branch (PSB). In addition, contractor employees must be fingerprinted by the EPA and receive favorable results. Once these requirements have been met, contractor employees may begin work while OPM conducts the background investigation.

(d) Contract-level CORs are the focal point for processing contractor security applications and are responsible for ensuring the investigative process is initiated in a timely manner. Prior to implementation, PSB will provide CORs with training materials and detailed instructions. The following are basic steps for the investigative process:

Step 1: Contractor company point of contact logs onto the secure EPA-identified portal iBOARD, creates an account, and submits complete employee information (name, Social Security Number, date of birth, citizenship, etc.). The processing time will vary depending on the number of employees the contractor submits.

Step 2: COR reviews and approves the data using the iBOARD utility in EPASS. Again, the amount of processing time necessary will vary depending on the number of employees submitted.

Step 3: COR completes risk designation by answering five questions in EPASS. Based on the answers to the questions, a risk designation is automatically assigned.

Step 4: Local/regional security representative approves or changes the position's risk designation. On average, this could take up to three business days.

Step 5: PSB performs a reciprocity check for prior investigations. Equivalent background checks from other agencies are considered acceptable. On average, this could take up to two business days.

Step 6: Contractor personnel access OPM's Electronic Questionnaires for Investigations Processing (e-QIP) system to complete required standard investigative

¹ Note: This will require building time into acquisition plans for the investigative process. The amount of time will vary depending on the acquisition; however, for planning purposes, program office officials and contracting officers should provide adequate time for each of the steps of the investigative process.

forms. This is only necessary for contractor employees who need access for more than six months.

Step 7: All contractor employees must be fingerprinted and provide two forms of ID, at a time and location to be specified by Security Management Division (SMD). Those needing access for more than six months must also be photographed. CORs will be copied on all notifications sent to contractor employees. The amount of processing time necessary will vary depending on the location. At headquarters, fingerprinting can be done without an appointment during normal business hours. Security offices collecting electronic fingerprints, like headquarters, can expect results in two to three business days. Collecting fingerprints on paper can take five or more business days.

(e) The actual cost to perform background checks is not a contract cost. The program office will directly fund the background investigation through the Working Capital Fund's "BV" service. The expected time needed for contract employees to complete forms for background checks is minimal and may be reimbursed under cost-reimbursement contracts. On fixed-price efforts, the additional time needed to complete forms, while not compensable, is negligible.

(f) Per FAR 4.1303, contracting officers shall insert FAR Clause 52.204-9 entitled, "Personal Identity Verification of Contractor Personnel" in solicitations and contracts when contract performance requires contractors to have routine physical access to a federally-controlled facility and/or routine access to a federally-controlled information system. The clause shall not be used when contractors require only intermittent access to federally-controlled facilities.

For more information about this program, visit SMD's EPASS website at (<http://intranet.epa.gov/oas/smartcard/index.html>).

If you have questions regarding the Security Management Division's procedures for conducting background checks on contractor employees, please contact the Personnel Security Branch at personnel_security@epa.gov.

Agency Access Badge Requirements for On-Site Contractor Personnel

To safeguard the EPA workforce and comply with Homeland Security Presidential Directive 12 (HSPD-12), Executive Order (E.O.) 13467, E.O. 13488 and Office of Personnel Management (OPM) regulations, the EPA requires the following:

- **For Unescorted Access for Six Months or Less**

Contractor employees needing unescorted physical access to a controlled EPA facility¹ for six months or less must be determined by the EPA to be fit before being issued a physical access badge (picture ID). A fitness determination is, per E.O. 13488, a decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a federal agency as a contractor employee. A favorable fitness determination is not a decision to contract with an individual. Contractor employees must undergo, at a minimum, an FBI fingerprint check of law enforcement and investigative indices (see Section 2).

- **For Unescorted Access for More than Six Months**

Contractor employees needing unescorted access to a controlled EPA facility for more than six months are required to have an HSPD-12 smart card, called an EPASS badge. Eligible contractor employees must have a completed or initiated background investigation at the National Agency Check and Inquiries (NACI) level or above, comply with all other investigative and HSPD-12-related requirements, and be determined by the EPA Personnel Security Branch (PSB) to be fit (see Section 3). “Initiated” means that all initial security requirements have been met (i.e., paperwork is completed, submitted, and PSB-approved; favorable fingerprint results have been received; funding has been provided to cover the cost of the investigation; and PSB has sent notification that the individual may begin work).

To ensure timely contract performance, the contractor must be prepared to immediately submit upon contract award the contractor employee information detailed in Section 1(c). This applies also to incumbent contractors’ employees for follow-on acquisitions. All contractor employees under a new contract are subject to the requirements in Sections 2 or 3; however, the time needed to meet security requirements may be shorter for personnel who already have a favorable fitness determination.

Contractor employees may begin work on the contract start date provided all applicable documentation in Sections 1, 2, and 3 has been received by the EPA and there is no derogatory information to preclude a favorable determination. Timely submission of contractor employees’ security forms and other required documentation is essential.

A favorable determination may be revoked at any time should the EPA discover derogatory information upon which a contractor employee is unfit. Contractor employees deemed unfit will not be allowed to continue under the contract, and the contractor will be responsible for providing replacement employees acceptable to the EPA.

¹ A controlled facility is an area to which security controls have been applied to protect agency assets. Entry to the controlled area is restricted to personnel with a need for access.

The EPA may make a determination of a contractor employee's fitness at any of the following points:

- When the EPA prescreens the individual's security forms. "Red flag" issues include:
 - Having been fired from a previous job or having left under unfavorable circumstances within the past five years (or longer, depending on the security form questions and type of investigation);
 - Failure to register with the Selective Service System (applies to male applicants born after December 31, 1959);
 - Within the past five years (or longer, depending on the security form questions and type of investigation), any arrest, charge, or conviction that has been upheld for violent or dangerous behavior or a pattern of arrests that demonstrates disregard for the law;
 - Illegal drug use within the previous year, or drug manufacture or other involvement for profit within the past five years (or longer, depending on the security form questions and type of investigation).
- When FBI fingerprint results are returned to the EPA;
- When OPM returns the individual's investigative results to the EPA;
- When the EPA becomes aware that the contractor employee may not be fit to perform work for or on behalf of a federal agency. The contractor is responsible for monitoring its employees' fitness to work and notifying the EPA immediately of any contractor employee arrests or illegal drug use.

1) Initial On-Site Contractor Requirements

This section contains the contractor's initial security requirements, which must be met before contractor employees can perform work **on-site** at EPA under this contract.

- a) The contractor must identify a point of contact (POC) and alternate POC to facilitate security processes.
- b) The contractor must ensure that all foreign nationals who will work under this contract have a valid U.S. Immigrant Visa or nonimmigrant Work Authorization Visa. The contractor must use e-Verify to verify employment eligibility as required by the FAR.
- c) The EPA requires contractor employee information for the investigative and EPASS processes. Immediately upon contract award, or anytime new personnel are brought onboard, the contractor POC must log on to a secure, EPA-identified portal, create an account, and submit complete contractor employee information: Full name (as found on employment records and driver's license), Social Security Number, date of birth, place of birth (city, state, country), citizenship, employee email address, EPA program office or regional office, and EPA work city and state. Note: Incomplete names, inaccurate names, and nicknames are unacceptable and may delay contractor employees' start date. Instructions and the portal link will be provided upon contract award.
- d) EPA will provide the login information for the portal. After submission of the contractor employees' data, the Contracting Officer's Representative (COR) will notify

the contractor POC if additional information or corrections are required. The COR's approval of the information triggers the investigative and EPASS processes.

2) Requirements for Contractor Employees Needing Unescorted Access for Six Months or Less

This section contains the requirements for contractor employees who are not eligible for an EPASS badge but who need unescorted physical access. The minimum security requirement is an FBI fingerprint check.

- a) Before the contractor employee can begin work on-site at the EPA:
 - i) He/she must be fingerprinted by the EPA; arrangements will be made by the COR.
 - ii) The contractor employee must satisfactorily respond to all questions/information requests arising from the EPA's review of the fingerprint results.
 - iii) The EPA must determine that the fingerprint results are favorable.

Once all requirements in Section 2(a) are met, the COR and contractor employee will be notified that the contractor employee can start work. Contractor employees will be issued a physical access badge and may work on-site at EPA. Contractor employees must sign a receipt acknowledging responsibility to safeguard the badge and surrender it when required (see Section 4(b)).

3) Requirements for Contractor Employees Needing Unescorted Access for more than Six Months

This section contains the requirements for contractor employees who are eligible for an EPASS badge and who must have, at a minimum, a NACI background investigation completed or initiated. Contractor employees needing access to sensitive information or otherwise occupying moderate- or high-risk positions must undergo an investigation above the NACI level. The EPA will assign a position risk level to each position on the contract and identify which contractor employees are EPASS-eligible.

- a) EPASS-eligible contractor employees must undergo a background investigation appropriate to the risk level of the position occupied, as specified by the EPA; the minimum acceptable investigation is a NACI.
- b) Employees who have previously undergone a federal background investigation at the required level, and who have worked for or on behalf of the federal government without a break in service since the investigation was completed, may not need a new investigation. The EPA will verify the investigative information and notify the contractor employee and COR if a new investigation is required. If an investigation is not needed, the contractor employee must still be fingerprinted by the EPA for an FBI fingerprint check, and have favorable fingerprint results returned before beginning work on-site at EPA.
- c) Before beginning work on-site at the EPA, contractor employees who require a new background investigation must:
 - i) Complete and submit the appropriate OPM security questionnaire specified by the EPA via OPM's e-QIP system. Access to e-QIP will be provided by the EPA; the

questionnaires are viewable at www.opm.gov/forms. Foreign national contractor employees must, on the security questionnaire, provide their alien registration number or the number, type, and issuance location of the visa used for entry to the United States.

- ii) For a NACI only, also complete the OF 306, Declaration for Federal Employment, as required by OPM for any NACI and available at http://www.opm.gov/forms/pdf_fill/of0306.pdf. Contractor employees must answer questions 1-13 and 16, then sign the form on the “Applicant” line, 17a.
 - iii) Follow all instructions on the form(s), answer all questions fully, and submit signature pages as directed by the EPA.
 - iv) Be fingerprinted by the EPA; arrangements for fingerprinting will be made by the COR.
 - v) Satisfactorily respond to all questions/information requests arising from the EPA’s review of the forms or fingerprint results.
 - vi) Receive favorable fingerprint results.
- d) Once all requirements in Section 3(c) are met, the COR and contractor employee will be notified that the contractor employee can start work. Contractor employees may work on-site at EPA while OPM conducts the background investigation.
- e) At a time and location specified by the EPA, contractor employees must report in person for EPASS identity (ID) proofing and show two unexpired forms of identification from the lists on Department of Homeland Security Form I-9. At least one of the documents must be a valid, unexpired state or federal government-issued photo ID; non-U.S. citizens must show at least one ID from Column A on Form I-9.
- f) Before being issued an EPASS badge, contractor employees must sign a receipt acknowledging responsibility to safeguard the badge and surrender it when required (see Section 4(b)). Contractor employees must meet all EPASS badge life-cycle requirements.
- g) A contractor employee has the right to appeal, in writing through the contractor POC to the COR, the denial or revocation of an EPASS badge. If the COR believes the appeal is justified, he/she will forward it to the Security Management Division (SMD). SMD’s decision on behalf of the EPA will be final.

4) Ongoing Contractor Security Responsibilities

- a) The contractor POC must immediately provide updated information via the secure portal when new contractor employees are added to the contract. These contractor employees must meet all initial investigative requirements before beginning work on-site at EPA. The contractor POC must also update information via the secure portal whenever a contractor employee leaves the contract.
- b) The contractor POC must ensure that all EPA physical access and EPASS badges are returned to the COR as soon as any of the following occurs, unless otherwise determined by the Agency: (i) when the badge is no longer needed for contract performance; (ii) upon completion of a contractor employee’s employment; or (iii) upon contract completion or termination.

- c) These EPA security requirements must be incorporated into all resulting subcontracts wherein contractor personnel working under the subcontract require EPA physical access.

Section 4.16 – Unique Procurement Instrument Identifiers

Subsection 4.16.1 – Procurement Instrument Identifier (PIID) Numbering System (September 2017)

4.16.1.1 Purpose.

This policy provides information on the “Procurement Instrument Identifier (PIID)” numbering system for unique and uniform award identification across federal government procurements.

4.16.1.2 Background.

This subsection is being issued to meet the requirements of [FAR Subpart 4.16](#), which was revised to implement a uniform PIID numbering system, that requires the use of Activity Address Codes as the unique identifier for contracting offices and other offices, in order to standardize procurement transactions across the Federal Government. Although the [final rule](#) was effective on November 13, 2014, [FAR 4.1601](#) established the implementation deadline for new unique procurement instrument identifiers as no later than October 1, 2017.

4.16.1.3 Authority/Applicability.

This subsection is issued in accordance with [FAR 1.301\(a\)](#) and [1.401\(f\)](#), and EPA Delegations Manual [Chapter 1-2](#).

4.16.1.4 Definitions.

- (a) Activity Address Code (AAC) – as provided in [FAR Subpart 2.1](#), the AAC is a distinct six-position code consisting of a combination of alpha and/or numeric characters assigned to identify specific agency offices.
- (b) Supplementary PIID – as provided in 4.16.1.5(b)(3), the supplementary PIID is used to identify procurement amendments and modifications.

4.16.1.5 Policy.

- (a) Effective October 1, 2017, all new solicitations, contracts and other procurement instruments (*see (b)(2)(iii) for list of instruments*) must contain a 13-digit PIID number that is established in accordance with this EPAAG policy and [FAR Subpart 4.16](#). The requirement to use this revised PIID numbering system is not retroactive to procurement actions prior to October 1, 2017; therefore, solicitations and contracts issued before this date are exempt from this PIID policy.
- (b) (1) In accordance with [FAR Subpart 4.16](#) the following 13-digit PIID format must be used as of October 1, 2017:

Example: **AAAAAFYZ0001** (do not use hyphens or dashes or spaces)

(2) PIID elements:

(i) **AAAAAA** – this is the six-digit AAC for the Contracting/Funding office; [at EPA there are 41 different AACs](#), the following 18 of which relate to contracting offices:

<u>AAC</u>	<u>Contracting or Funding Office Name</u>
68HE01	REGION 1 CONTRACTING OFFICE
68HE02	REGION 2 CONTRACTING OFFICE
68HE03	REGION 3 CONTRACTING OFFICE
68HE04	REGION 4 CONTRACTING OFFICE
68HE05	REGION 5 CONTRACTING OFFICE
68HE06	REGION 6 CONTRACTING OFFICE
68HE07	REGION 7 CONTRACTING OFFICE
68HE08	REGION 8 CONTRACTING OFFICE
68HE09	REGION 9 CONTRACTING OFFICE
68HE0A	LAB - MONTGOMERY, AL - CO OFFICE
68HE0B	ORD SIMPLIFIED ACQ BRANCH (SAB)
68HE0C	CINCINNATI PROC OPS DIVISION (CPOD)
68HE0D	RTP PROC OPS DIVISION (RTPPOD)
68HE0G	SACO - OFF INSP GEN (OIG)-CO OFFICE
68HE0H	HQ PROC OPS DIVISION (HPOD)
68HE0M	LAB - ANN ARBOR, MI - CO OFFICE
68HE0S	SF PROC OPS DIVISION (SRRPOD)
68HE0Z	CONTRACT CLOSEOUT TEAM (CCT)

(ii) **FY** – this is the last two digits of the fiscal year in which the PIID number is assigned.

(iii) **Z** – this position indicates the type of procurement instrument. The entire listing can be found at [FAR 4.1603](#) and here are the relevant ones for procurements:

<u>Letter Designation</u>	<u>Instrument</u>
A	Blanket Purchase Agreement (BPA)
B	Invitation for Bids (IFB)
C	Contracts of all types <u>except indefinite-delivery contracts</u>
D	Indefinite-delivery contracts (including Federal Supply Schedules (FSSs), Governmentwide Acquisition Contracts (GWACs) and Multi-Agency Contracts (MACs)
F	Task/Delivery Orders under indefinite-delivery contract (including FSS, GWAC and MAC), BPA or Basic Ordering Agreement (BOA)
G	Basic Ordering Agreement (BOA)
K	Purchase Card Order
L	Lease agreement
P	Purchase Order (PO)
Q	Request for quotations (RFQ)
R	Request for proposals (RFP)
U	<i>[Overflow for Q if the number of RFQs issued exceeds numbering capacity of 9,999 for fiscal year]</i>
V	<i>[Overflow for P if the number of POs issued exceeds numbering capacity of 9,999 for fiscal year]</i>

(iv) **0001**- this is a four-digit sequence numbering up from 0001.

(3)(i) **Supplementary PIID** – as provided in [FAR 4.1603\(b\)](#), supplementary PIIDs are required to identify amendments to solicitations, and modifications to contracts, orders and agreements as follows:

(ii) Amendments to solicitations must be numbered sequentially from 0001 using a four-digit number that is added to the 13-digit PIID, for instance “68HE0S17R0023**0005**” indicates solicitation amendment 0005.

(iii) Modifications to contracts, orders and agreements must be numbered using a six-digit field that is added to the 13-digit PIID, where the first digit added is P and the number is sequential from 00001. The digit P is designated for modifications issued by the procuring/preaward

contracting office that awarded the contract, order or agreement; for instance, “68HE0S17C0017P00003” indicates contract modification 00003, issued by procuring/preaward contracting office.

CHAPTER 6 – COMPETITION REQUIREMENTS

Section 6.3 – Other Than Full and Open Competition

Subsection 6.3.1 –Bridge Justification for Other Than Full and Open Competition (January 2018)

6.3.1.1 Purpose.

The purpose of this subsection is to define the term “Bridge Vehicles” (contracts) and clarify the requirements for Justifications for Other Than Full and Open Competition (JOFOCs) for sole source awarded bridge contracts, orders, and modifications.

6.3.1.2 Background.

The US Government Accountability Office (GAO) Report GAO-16-15, *Sole Source Contracting – Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, notes that though bridge contracts can be a necessary and appropriate tool, their use has also been associated with negative effects, such as higher contract prices due to a lack of competition, and the inefficient use of staff and resources.

To ensure the appropriate use of bridge contracts, orders, and modifications, this subsection clarifies the requirements of JOFOCs for sole source awarded bridge vehicles.

6.3.1.3 Authority/Applicability.

(a) Authority.

This subsection is issued in accordance with FAR 1.301(a), and EPA Delegations Manual Chapter 1-2.

(b) Applicability.

Bridge contracts and orders can be either competitively or non-competitively awarded. The justification content requirements in this subsection only apply to sole source bridge vehicles (i.e., contracts, orders, and modifications) awarded to incumbent contractors.

Please note that the justification content requirements in this subsection also applies to bridge vehicles issued under FAR 8.405-6, 13.106-1(b), 13.501(a)(1)(ii), and 16.505(b)(2)(ii). Please see EPAAG subsections 8.4.1.5(a)(9), 13.1.1.5, 13.5.1.5 and 16.5.1.5.1 for additional information.

6.3.1.4 Definitions.

Bridge Vehicle – The term “bridge vehicle” describes a new contract, new order, or modification to an existing contract or order that funds an extension beyond the period of performance (including option years if the options were evaluated as part of the initial competition); awarded competitively or on a sole source basis, for a short term, the purpose of which is to avoid a lapse in performance until a follow-on contract, order, or modification can be awarded.

Follow-on Contract/Order – A contract or order that follows the bridge vehicle for the same or similar services/supplies provided under the existing contract/order and bridge vehicle.

Existing Contract/Order – The contract or order in place prior to the award of the bridge vehicle.

Short Term – Bridge vehicles (whether one or a combination of bridge vehicles taken together) shall normally be limited to a total of six months. If adequately justified, the HCA may approve a waiver to the six-month limitation on a case by case basis.

6.3.1.5 Policy.

6.3.1.5.1 Appropriate Use of Bridge Vehicles.

A bridge vehicle shall be used only when it is not possible to award the planned follow-on contract or order in sufficient time to meet the Government’s requirements. The use of a bridge vehicle is appropriate when the delay in awarding a new contract or order is due to unforeseen circumstances such as a change in acquisition strategy, statutory or regulatory changes, protests of the follow-on contract or order, or other circumstances demonstrated not to be due to lack of advance planning and schedule management.

6.3.1.5.2 Sole Source Bridge JOFOC Content Requirements.

JOFOC content requirements are listed in FAR 6.303-2 and EPAAR 1506.303-2. The following information must also be included in sole source bridge JOFOCs:

- (a) The title of the justification must identify it as a bridge i.e., “Bridge Justification for Other Than Full and Open Competition” (FAR 6.303-2(b)(1));
- (b) The JOFOC must clearly state that this is a bridge contract, order, or modification per FAR 6.303-2(b)(2), *Nature and/or description of the action being approved*, and
- (c) The JOFOC must include the following information per FAR 6.303-2(b)(9), *Any other facts supporting the use of other than full and open competition*:
 - (i) *Rationale* – Include the following:
 - Identify the cause(s) of delay in the acquisition process that necessitates the use of a bridge vehicle,

- Explain why there cannot be a lapse in service, and
- Identify actions to be taken to eliminate future need for non-competitive bridge vehicles.

Be prepared to provide supporting technical/program documentation and/or evidence that supports the detailed rationale.

(ii) *Cost* – Identify the cost of the existing contract or order award, the cost of the current bridge vehicle, and the cost for any prior bridge vehicle;

(iii) *Period of Performance* – Identify the period of performance of the existing contract or order, the period of performance of the current bridge vehicle, and the period of performance for any previously approved bridge vehicle;

(iv) *Follow-on* – Attach a copy of the approved Advanced Procurement Plan (APP) and current milestone schedule of the follow-on vehicle; and

(v) *Previous Bridge JOFOC* – Attach a copy of any previously approved bridge JOFOC prior to this JOFOC.

6.3.1.5.3 Bridge JOFOC Approval.

Sole source bridge JOFOCs shall be reviewed and approved in accordance with the instructions under EPAAG 1.6.1-A, block 8, *Bridge Justifications that Limit Competition*, and FAR 6.304.

6.3.1.5.4 Tracking of Bridge Vehicles.

Contracting officers must fill-in the custom field in EAS for bridge vehicles whether competitively or non-competitively awarded.

CHAPTER 7 – ACQUISITION PLANNING

Section 7.1 – Acquisition Plans

Subsection 7.1.1 Acquisition Planning (July 2020)

This subsection was previously Section 7.1 of the Contracts Management Manual.

7.1.1.1 Purpose.

This subsection provides guidance for implementing acquisition planning to ensure that EPA meets its needs in the most effective, economical, and timely manner, resulting in the best value for the Government.

7.1.1.2 Background.

Acquisition planning is the process by which all personnel responsible for an acquisition coordinate a plan to fulfill agency needs in a timely manner and at a reasonable cost. When proper acquisition planning does not take place, the result may be poorly defined requirements, lack of competition, protests, and ultimately, a detrimental effect on the agency's ability to receive mission critical goods and services.

Federal Acquisition Regulation (FAR) Part 7 requires acquisition planning for **all** acquisitions. However, with the exception of mandating formal written plans for cost reimbursement and high- risk contracts, the FAR does not spell out the level of detail required for meaningful acquisition planning. This is left up to the head of each agency. EPAAG 7.1.1 spells out EPA's acquisition planning policy, which is designed to align the value and complexity of an acquisition to the appropriate level of detail in acquisition planning.

7.1.1.3 Authority/Applicability.

The authority for this section is FAR 7.103 which requires Agency heads to establish certain criteria and thresholds for acquisition planning.

7.1.1.4 Acronyms.

Advanced Procurement Plan (APP)
Acquisition Planning Team (APT)
Branch Chief (BC)
Business Analysis and Strategic Sourcing (BASS)
Capital Planning and Investment Control (CPIC)
Chief of the Contracting Office (CCO)
Office of the Chief Financial Office (OCFO)
Confidential Business Information (CBI)
Contracting Officer (CO)
Contracting Officer Representative (COR)

Contract Specialist (CS)
Designated Small Business Representative (DSBR) or Regional Small Business Coordinator (RSBC)
Electronic and Information Technology (EIT)
EPA Acquisition System (EAS)
Federal Strategic Sourcing Initiative (FSSI)
Funds Control Officer (FCO)
Head of the Contracting Activity (HCA)
Independent Government Estimate (IGE)
Information Management Officer (IMO)
Information Technology (IT)
North American Industry Classification System (NAICS)
Office of Acquisition Solutions (OAS)
Office of Mission Support (OMS)
Office of Federal Procurement Policy (OFPP)
Office of General Counsel (OGC)
Office of Management and Budget (OMB)
Office of Regional Counsel (ORC)
Office of Small and Disadvantaged Business Utilization (OSDBU)
Organizational Conflict of Interest (OCI)
Performance Work Statement (PWS)
Procurement Action Lead Time (PALT)
Regional Acquisition Manager (RAM)
Senior Resource Official (SRO)
Simplified Acquisition Threshold (SAT)
Statement of Objectives (SOO)
Strategic Sourcing Program (SSP)

7.1.1.5 Policy.

EPA's acquisition planning policy consists of four stages which should be performed within the applicable Procurement Action Lead Times (PALT) set forth in Attachment A, *PALT Standards*. The four stages are 1) Acquisition Forecasting 2) Procurement Initiation 3) Acquisition Planning and 4) Procurement Package.

Stage 1, acquisition forecasting, is an annual requirement whereby the Office of Acquisition Solutions (OAS) and respective program offices, in consultation with OSDBU or DSBR/RSBC, forecast upcoming requirements three years in advance of the required need date. The acquisition forecasting process identifies all of a program office's upcoming acquisitions above the Simplified Acquisition Threshold (SAT).

Stage 2, procurement initiation, alerts the contracting office and OSDBU or DSBR/RSBC that an acquisition is forthcoming.

Stage 3, acquisition planning, requires the formation of an Acquisition Planning Team (APT) to create an Advanced Procurement Plan (APP) appropriate for the value and complexity of the acquisition.

Stage 4 is when the program office prepares and submits a complete procurement package to the contracting office which will lead to the solicitation and award of a contract.

7.1.1.5.1 Roles and Responsibilities

All parties with a vested interest in an acquisition should be involved in the acquisition planning process. This includes the program office, the contracting office, the finance office, the OAS Policy Office, the Office of Small and Disadvantaged Business Utilization (OSDBU), and the Office of General Counsel (OGC) or the Office of Regional Counsel (ORC).

While all of these parties may be involved in the acquisition planning process, the program office and the contracting office bear the majority of responsibility. Neither the program office nor the contracting office has sole responsibility, and the two entities must work closely with each other to perform these duties.

The contract level Contracting Officer Representative (COR) or Program Office Representative (POR) is responsible for initiating a procurement in accordance with PALT standards. The COR or POR also, actively participates in the acquisition planning phase, by collaborating with the Contracting Office and designated Small Business Representative to prepare a complete procurement package as defined in Section 7.1.1.5.6 below. The CO is responsible for ensuring that collaborative acquisition planning takes place. The CO is also responsible for acquisition planning decisions such as contract type and solicitation procedures. As such, the CO must be involved in acquisition planning from the beginning.

7.1.1.5.2 Procurement Action Lead Times.

The purpose of PALT is to aid acquisition planners in determining adequate lead time necessary to perform all acquisition planning and subsequent steps prior to award of an action. PALT also helps OAS to measure and improve its acquisition processes. By analyzing the milestone data associated with PALT, OAS can identify and implement areas for improvement. It should be noted that individual PALTs are not written in stone. They are baselines to be continually monitored and updated as needed.

The PALT standards are defined in EPAAG 7.1.1 Attachment A. Attachment A provides 14 general workload categories with different standards at various dollar values for a total of 30 individual PALTs. While there are generally over 60 types of procurement actions performed in most acquisition offices, all the actions fall into one of the 14 general workload categories contained in Attachment A and can be used as a guide for workload planning.

There are two phases of PALT: Phase 1 is Acquisition Planning. The Acquisition Planning PALT includes all of the necessary steps involved in acquisition planning described in Section 7.1.1.5.5 below such as convening the APT, completing the APP and finalizing the procurement

package. Acquisition Planning PALT ends when the contracting officer determines the procurement package is complete. It should be noted that PALT standards for acquisition planning are minimums. Acquisition planning should begin as soon as feasibly possible.

Phase 2 is Execution. This includes all of the necessary steps to solicit and award a contract such as issuing the solicitation, receiving and evaluating proposals, holding discussions and completing the award. Unlike the Acquisition Planning PALT which is based on minimum standards, the Execution PALT is designed as a maximum. While it may not always be possible to meet the Execution PALT, this should be the standard that the acquisition team strives to achieve.

The Acquisition Planning PALT and the Execution PALT must be combined to determine the overall PALT which can then be used to determine how far in advance to begin acquisition planning. For example, the Acquisition Planning PALT for a Competitive Proposal above \$1 Million and below \$10 Million is 120 calendar days. The Execution PALT for this type of acquisition is 150 calendar days. The two PALTs combined equal 270 calendar days which is the minimum amount of time before the contract is needed that acquisition planning should begin. Therefore, if an acquisition is needed on October 1 of a given year, acquisition planners must look at the calendar in advance and calculate backwards to determine the date acquisition planning must begin. The date calculator at www.timeanddate.com is a useful tool for determining when planning should start. Using the previous example, if an acquisition was needed on October 1, 2015, and the combined Acquisition Planning and Execution PALT is 270 calendar days; the latest recommended start date for acquisition planning would be January 4, 2014.

Actual PALTs may vary due to individual complexities of each acquisition. This is acceptable as long as any deviation from the PALT standard is documented.

7.1.1.5.3 Acquisition Forecasting

I. Request for Three-Year Acquisition Plans

By January 15th of each fiscal year, the OAS Director, in conjunction with the OSDDBU Director, will issue a memorandum to the Senior Resource Officials (SROs) requesting a Three-Year Acquisition Plan forecasting all acquisitions above the simplified acquisition threshold that will be initiated in the next three years. The call memorandum will be posted on the OAS and OSDDBU intranet pages, as well as on the Acquisition Forecast and Small Business Advocacy Community of Practice SharePoint site.

All Acquisition Plans are to be posted by Junior Resource Officials (JROs), Regional Small Business Coordinators or a program office equivalent to the APEX Forecast Database no later than March 31st of each fiscal year.

Instructions for preparing the Three-Year Acquisition Plan are included in the memorandum each year. Similar classes of acquisitions may be addressed jointly if the anticipated contracts

will be similar in type, program support, award methodology, time frame, or other vital components which allow them to be described and understood jointly.

II. OAS Assistance Formulation/Updating of the Three-Year Acquisition Plan

The Chief of the Contracting Office (CCO) for each OAS/RAM will arrange a meeting with program offices they support to discuss formulation/updating of the Three-Year Acquisition Plan. In addition to the responsible program and contracting personnel, a representative from OSDBU or an OSDBU designee and the Agency Advocate for Competition (AAC) must be invited to participate in these meetings. The AAC must be included in the meeting to have discussions or answer questions surrounding competition issues. For plans involving information technology (IT) requirements, a representative from the Office of Environmental Information (OEI) should also be included. Discussions should focus on developing strategies that promote socio-economic contracting opportunities, competition, performance based contracting approaches and streamlined contracting methods. Recommended topics for discussion include, but are not limited to:

- 1) Program priorities
- 2) Contracting workload
- 3) Market research strategies
- 4) Acquisition streamlining strategies
- 5) Use of multi-agency contracts
- 6) Use of performance-based service acquisitions
- 7) Full and open competition considerations
- 8) Socio-economic goals
- 9) Contract bundling issues
- 10) How to maximize responsiveness/minimize lead-times
- 11) Forecast submittal of individual procurement requests
- 12) Funding issues
- 13) Knowledge gained in prior acquisitions to improve statements of work
- 14) Anticipated challenges
- 15) Minimizing high risk contracts

The need for any subsequent meetings will be determined on a case-by-case basis by the program and contracting offices.

All EPA offices must use the APEX Forecast Database to input their Three-Year Acquisition Plan. It is preferable that offices submit information directly to the database via the JRO role or Data Entry role, available to those who can enter data without any approving role. However, the Acquisition Forecast Template/Smart Template can be used by JROs or designated program officials as a tool to distribute and collect forecast data from divisions within their respective offices for input into the APEX Forecast Database. The Acquisition Forecast Template is located on the Acquisition Forecast and Small Business Advocacy Community of Practice SharePoint site. All Acquisition Forecast submissions must demonstrate how they relate to the Agency's Strategic Plan. Agreement on a Three-Year Acquisition Plan is reached when both the SRO and the supporting CCO approve their office's draft record batches in the APEX Database

System that correspond to their office's Three-Year Acquisition Plan. Once a plan has been agreed upon by the SRO and the supporting CCO, it will be reviewed by OSDDBU and the AAC, with final approval and posting to the Agency's public website by OAS Account Managers (ACMs).

Updates to the Three-Year Acquisition Plan will be made by the program office JRO, or their designated official, in cooperation with OAS contracting personnel, in the APEX Forecast Database. Any changes or updates made need to be communicated by OAS COs to all impacted parties, to include program office personnel and forecast database liaisons to ensure an accurate status of the current state of procurements is available at all times.

7.1.1.5.4 Procurement Initiation

In order to ensure adequate time for acquisition planning, solicitation and award, program officials must initiate procurements in accordance with PALT standards. Applicable PALTs should be used as a guideline for this process (see section 7.1.1.5.2 above).

In order to initiate a procurement, the requisitioner must create an Advanced Procurement Plan (APP) in EAS when required and a planning Requisition Document (see Section 7.1.1.5.5 to determine when an APP is required). If funds are not currently available for the Requisition Document, a zero-dollar Requisition Document must be submitted.

I. Advanced Procurement Plans (APP)

- A. The program office must initiate an APP in EAS as required in Section 7.1.1.5.5 II below.
- B. The APP template is used to create a complete acquisition plan prior to issuing a solicitation (see Section 7.1.1.5.5). Only preliminary information should be completed in the APP during the procurement initiation process (See Initial Step in 7.1.1.5.5 A below). The APP should be routed to the appropriate Contracting Office who will then assign a CO to the acquisition (automatic routing is not available in EAS). No in-depth reviews of the documents are required by the Contracts Office at this time. The Contracting Office will accept the PR associated with the APP at the same time, and assign the PR to the Contracting Officer assigned to the APP. If the Contracting Office determines that the Initial Phase of the APP has not been completed properly, the Contracting Office must reject the PR associated with the APP and will tell the COR what is needed for the APP to be considered acceptable. Once the requested updates have been made to the APP, the COR will Resubmit the PR in EAS. Upon determining the APP to be acceptable, the Contracting Office will Accept the PR.

- C. The CO will then form and convene an Acquisition Planning Team (see Section 7.1.1.5.5 I). The team will work collaboratively to finalize the APP and submit it for required reviews and approvals in Section 7.1.1.5.5 below.

II. EAS Requisition Document

- A. The Requisition Document must be routed for review and approval within the program office, including the Funds Control Officer (FCO). The PR must include in the description field the APP number associated with the PR. The purpose of the FCO's review and approval is to ensure funds are available, or in the case of a zero-dollar Requisition Document, that funds will be made available. Actions above the SAT that were not previously included in the approved Three-Year Acquisition Plan must be approved by the SRO and an amendment to the Three Year Acquisition Plan must be submitted in accordance with the instructions included in the annual memorandum calling for the Three Year Plans. (See Section 7.1.1.5.3 I).
- B. Once the Requisition Document is internally routed and approved by the program office, it is assigned to the contracting office based on the data included in the "acquisition office/buyer" field. The requisitioner should contact his/her respective contracting office for questions related to this field.

7.1.1.5.5 Acquisition Planning

To ensure proper acquisition planning takes place, this policy formalizes the requirement for an Acquisition Planning Team (APT) and an Advanced Procurement Plan as part of the procurement initiation. Orders placed against existing EPA contracts are exempt from both requirements; however, the CO should consider using the procedures below for orders that require significant decision making, such as whether the order should be fixed price or cost reimbursement (see EPAAG 16.1.1). Orders placed against any external agency's contract are subject to this policy with the exception of interagency agreements.

I. Phases of the Acquisition Planning Process

The program office must initiate the APP in EAS for all procurements above the SAT and all cost reimbursement and high-risk acquisitions regardless of dollar value (high-risk is defined as anything other than Firm Fixed Price, see also EPAAG 16.1.1). The EAS template for creating the APP is included as Attachment B.

Once initiated, the acquisition planning team will work through the phased acquisition planning approach set forth below. Responsible parties will be assigned to each phase of the process. APT members should keep in mind that this is a collaborative process, and members should work together as needed to complete the phases set forth below. Other members of the APT must be involved in the process as needed during the phased acquisition planning process, including OGC, OCFO, OSDBU and others. However, final decisions, such as contract type, determinations to set aside to small businesses, etc. are the responsibility of the contracting

officer. Routing and approval must occur in EAS. Use the Review Route function to route to all participants other than the approving official. A copy of the final plan must be included in the official contract file.

At a minimum, the acquisition plan must address all relevant sections in the template and follow the principles of FAR Subpart 7.1. However, acquisition planners should not rely solely on the template. It is the CO's responsibility to ensure updates to FAR Part 7 are included in the plan as well as any applicable information that may not be in the template. Review and approvals must be obtained as required by EPAAG 1.6.1-A.

The program office must ensure all requirements of EPA Order 1130.2a have been met such as SRO approval for advisory and assistance services, and obtaining approval to purchase information technology in accordance with EPAAG 39.1.1 during the acquisition planning process. As each program office has different internal requirements for JRO/SRO involvement in the acquisition planning process prior to final approval of the APP, the COR is responsible for ensuring that internal program office policies and practices are followed as needed. This will ensure that the final APP prepared by the APT is ready to be approved by the SRO upon its completion.

Once approved, the acquisition plan may be changed or amended if the circumstances, facts or assumptions of the original plan have changed, or it makes good business sense to do so. Material or significant amendments to the acquisition plan such as changes in contract type, competition, method of solicitation, funding or major milestone changes must be coordinated and approved at the same level as the original plan and properly documented in the APP in EAS.

The APP must be filled out in accordance with the following phases identified in the APP template.

- A. Initial Step: COR Submit the APP in EAS with the following questions completed and \$0 PR and FITIRA Approval(if required) and Preliminary Market Research and IGCE and PWS and 1900-65**
- B. Phase 1: Assign CO and CS**
- C. Phase 2: Milestones – CO to fill out based on PALT**
- D. Phase 3 Mandatory Planning Kickoff Meeting**
- E. Phase 4: Pre-Planning Required**
- F. Phase 4.1 Additional Reviews (Security/Conferences)**
- G. Phase 4.2 Technical Evaluation Criteria Draft**
- H. Phase 5: Market Research**
- I. Phase 6: Small Business Concerns**
- J. Phase 7: Required Common Contracting Research**
- K. Phase 7.1: Competition Justification**
- L. Phase 8: FINAL Market Research - COR and CO and OSD BU**
- M. Phase 9: Contract Considerations - COR and CO**
- N. Phase 10: Budget Information**
- O. Phase 11: Final Approvals**

A. Initial Step: COR Submit the APP in EAS with the following questions completed and \$0 PR and FITIRA Approval(if required) and Preliminary Market Research and IGCE and PWS and 1900-65 COR Nomination Form
Responsible Party: COR

The first phase is “Initial Step,” and this step must be completed by the COR at the time of the \$0 PR submission. The initial questions to be answered by the program (COR), as well as the list of initial required documentation are highlighted under this step in the attached template, and this information is required before a contracting officer can be assigned. The program office must complete initial step questions and the initial required documentation before submission of the APP and \$0 PR in EAS.

Preliminary Market Research/Information Gathering: The COR must conduct preliminary market research to determine the status of the current marketplace for the items/services to be procured. Market research is defined as collecting and analyzing information about capabilities within the market to satisfy agency needs. CORs can document market research information obtained via on-line searches for the product/service, information obtained via trade journals, attendance at conferences and trade shows, review of catalog and vendor literature available, etc.

Information Technology (IT) Requirements (defined in FAR 2.101)
Responsible Party: COR

Federal Information Technology Acquisition Reform Act (FITARA) - EPA personnel may not enter into a contractual action or interagency acquisition, regardless of dollar value, for information technology or information technology services, unless the action or interagency acquisition has been approved by the agency Chief Information Office as instructed in EPAAG 39.1.1, *Information Technology Acquisition Approval Procedures*.

The requiring official, typically the Contracting Officer’s Representative (COR), is responsible for submitting the request and obtaining approval for an acquisition containing IT. After approval is received, a copy of the approval must be included with the Advanced Procurement Plan (APP), if an APP is required in accordance with EPAAG 7.1.1. A copy of the approved APP must be sent to the contracting office. If an APP is not required, a copy of the approval must be included with the requisition. The contracting officer must have a copy of the approval before a solicitation can be issued.

Modular IT Development - Contracts for IT pose unique challenges. Government agencies have traditionally purchased IT by first performing a comprehensive design to develop, modernize and enhance IT investments. While this seems like a logical plan, the problem is that by the time the requirement is defined, which can take years, it is often obsolete. The solution is a modular approach which divides IT investments into smaller parts which can then be defined, developed and employed within months. FAR Part 39, which governs IT purchasing, dictates that agencies use modular contracting to the maximum extent practical

when buying major systems. See also [OMB's June 14, 2012 Contracting Guidance to Support Modular Development](#)

Capital Planning and Investment Control (CPIC) Program - is a structured, integrated approach to managing the Agency's IT investments. It ensures that all IT investments align with the EPA mission and support business needs while minimizing risks and maximizing returns throughout the investment's lifecycle. CPIC relies on a systematic approach to IT investment management in three distinct phases: select, control, and on-going evaluation, to ensure each investment's objectives support the business and mission needs of the Agency. IT purchases valued between \$250K to \$3M go through what is called the CPIC Lite process. Investments over \$3M are part of the Major Exhibit 300 process. For all new IT investments classified as Major, the Acquisition Plans must address the potential need for exchanges with industry, such as pre-solicitation conferences (Agency planners should ensure prior to purchasing IT that the requirement has been vetted through the CPIC process. Requirement details along with points of contact can be found on the intranet at <http://intranet.epa.gov/cpic/index.htm>.

Section 508 - In accordance with FAR Subpart 39.2, all Electronic and Information Technology (EIT) purchases, regardless of dollar value, must meet the requirements of Section 508 of the Rehabilitation Act unless one of the exceptions at FAR 39.204 applies. Under Section 508, agencies must give both employees and members of the public with disabilities access to information that is comparable to the access available to others. Electronic and IT purchases include, but are not limited to:

- ✓ Telephones, smart phones, and mobile devices
- ✓ Televisions, DVD players, and videotaped productions
- ✓ Internet and Intranet websites
- ✓ PDF documents
- ✓ Content on DVDs and CDs
- ✓ On-line training
- ✓ Webinars and teleconferencing
- ✓ Technical support call centers
- ✓ Remote access websites and tools
- ✓ Tablet, laptop, and desktop computers
- ✓ Software and operating systems
- ✓ User guides for software and tools
- ✓ Copiers, printers, and fax machines
- ✓ Calculators
- ✓ Lab equipment

EPA has a Section 508 Accessibility intranet page, including checklists, to help guide acquisition planners when buying equipment subject to the Act. This information can be accessed at the following link: <http://intranet.epa.gov/accessibility>. In addition to EPA's training materials, a short 15-minute training module on these guidelines is available via the Section 508 web site at <http://www.section508.gov>. This web site is administered and maintained by the General Services Administration (GSA). You will need to register by

selecting the "Register for the 508 Universe" on the right side of the screen. After registering, select "Login." Once you are successfully logged in, select "508 Training Courses" from the menu on the left, then select "Micro Purchases and Section 508" from the list to take this 15 minute course. Other valuable information is also available on the Section 508 web site, such as available vendors and specific guidelines. For problems accessing the resources and training on this web site, please contact GSA directly at section.508@gsa.gov or call 202-501-4906.

Agency Information Management Officers (IMOs), or their appointed representative(s), must approve all EIT purchases prior to award.

B. Phase 1: Assign CO and CS

Responsible Party: Contracting Office POC

Upon receipt of the \$0 PR and the APP with the initial step completed, the Contracting Office will accept the APP package for processing. The Contracting Office must accept the APP and \$0 PR in EAS and will assign a Contracting Officer and a Contract Specialist. The Contracting Office will only reject the \$0 PR if the initial questions or documentation are not completed as set forth above. At this point in the process, the Contracting Office is just determining if the initial step phase has been completed; a quality assessment of the documents should not be conducted at this time.

C. Phase 2: Milestones – CO to fill out based on PALT

Responsible Party: CO/CS

The Contracting Officer must complete the milestone dates upon assignment of the APP package. The milestones must be filled out in accordance with the PALT defined by the corresponding \$0 PR.

D. Phase 3 Mandatory Planning Kickoff Meeting

Responsible Party: CO/CS

The template must indicate when the meeting occurred. This is a mandatory step before any other phases in the APP can be completed.

After the APP and requisition document have been submitted during the procurement initiation process, an Acquisition Planning Team (APT) must be formed and a meeting must convene for all acquisitions above the SAT in accordance with the procedures below. APT meetings are not the same as the broad level meetings that take place during the acquisition forecasting process. Unlike the acquisition forecasting meetings, the APT meetings focus on a single acquisition and are designed to ensure detailed planning occurs for each acquisition. These meetings do not replace other requirements such as Advocate for Competition review, EPA 1900-37 coordination, OGC review of conflicts of interest, etc.

For all acquisitions above the SAT, the contracting officer must organize and lead a formal team to perform acquisition planning. The team must be formed and the initial meeting held as soon as reasonably practicable, upon completion of Phase 2, Milestones. The members of

the team will vary depending on the value and complexity of the acquisition, and the contracting officer has discretion in choosing who to include. At a minimum, the team will consist of the contracting officer and the contract level COR. However, the contracting officer must consider including all persons with significant responsibilities for completing acquisition planning, e.g., the proposed COR, project manager, contracting officer, contract specialist, OGC, the Advocate for Competition, OSDDBU, OMS and any other group or individual within the agency whose expertise would add value to the process. While it is not feasible for every party listed above to participate on every APT, at a minimum, the team must consult all of the above parties regarding decisions that fall within their areas of expertise.

During the early stages of planning, the APT must identify critical decisions, tasks, and milestones, including assignment of who has the primary responsibility for completing each one. APT progress meetings must be held as necessary throughout the life of the acquisition planning cycle to ensure critical decisions are made and critical tasks are performed. Not all members of the acquisition planning team need to be present for all meetings, and after the initial meeting, the contracting officer may delegate the role of chairing the meetings to the contract specialist. Conducting teleconferences and video conferences in lieu of in person meetings is acceptable when it makes sense to do so.

The contracting officer must include documented evidence of all APT meetings as attachments in the EAS Advanced Procurement Plan and the official contract file. The level of documentation is at the contracting officer's discretion. Examples of acceptable documented evidence include meeting minutes, a copy of an agenda with a list of attendees, a memo for record, etc.

E. Phase 4: Pre-Planning Required **Responsible Party: COR**

NAICS Code: The COR must enter the appropriate North American Industry Classification System (NAICS) code, the title of the NAICS code, and the small business size standard for the procurement. The small business size standard is expressed as a dollar value or a number. The size standard establishes the maximum limitation for earnings or the number of employees an organization can have in order to be considered a small business. For more information on NAICS Codes, visit the Internet at:
http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf

F. Phase 4.1 Additional Reviews (Security/Conferences)

Organizational Conflicts of Interest (OCI)

Responsible Party: CO/CS and COR

FAR Subpart 9.5 provides policies to help identify and address circumstances in which a government contractor may be unable to render impartial assistance or advice to the government, or might have an unfair competitive advantage based on unequal access to information or prior involvement in setting the ground rules for an acquisition. FAR 9.504 directs contracting agencies to "identify and evaluate potential OCIs as early in the

acquisition process as possible” and “avoid, neutralize, or mitigate significant potential conflicts before contract award.” In addition, EPA acquisition planners need to be familiar with the policies and procedures in EPAAG Part 9 and EPAAR Subpart 1509 that address conflicts of interest.

Conferences

Responsible Party: COR

In order to mitigate the risk of inappropriate spending, special care needs to be given during the acquisition planning phase when contracting for goods and services in support of Agency conferences. The OMB, the EPA Deputy Administrator, the EPA Office of the Chief Financial Officer (OFCO) and OAS have all issued guidance and procedures in relation to conference support, including a definition of what constitutes a conference and conference spending.

EPA’s definition of a conference or conference-related activity is an internal or external meeting, retreat, seminar, symposium or event that involves expenses from the following categories:

- Attendee travel paid for by the EPA
- Training activities
- EPA hosted or co-hosted, sponsored or co-sponsored events incurring speaker fees, food and refreshment expenses, non-federal facility expenses, audio visual expenses and/or contract related conference expenses

Acquisition planners must be familiar with EPA’s conference spending guidance and ensure the required procedures are adhered to, such as submitting the EPA Form 5170, *Conference Activities Spending Request*, for approval. All conference related guidance and procedures, as well as an expanded definition, can be found on the OFCO’s intranet site at http://intranet.epa.gov/fmdvally/management_integrity/conferences.htm.

HSPD 12 Requirements/ Personal Identify Verification

Responsible Party: COR

Contractor and subcontractor employees who will have routine access to government facilities and information systems must follow the personal identity verification process and procedures spelled out in [FAR subpart 4.13](#), which implements [Homeland Security Presidential Directive \(HSPD\) 12](#) and Federal Information Processing Standards Publication ([FIPS PUB\) Number 201](#), *Personal Identity Verification of Federal Employees and Contractors*.

EPA’s internal process for implementing these procedures can be found in EPAAG [Subsection 4.13.1](#), *Access Badge Requirements for On-Site Contractor Employees*, and includes a Performance Work Statement (PWS) attachment that must be included in all contracts where contractor employees will require routine access to government facilities and information systems.

In addition to ensuring the PWS attachment is included with the PWS, acquisition planners need to be cognizant of the personal identity verification process to ensure they allow enough time between contract award and contract start date to allow for contractor employees to be verified. Processing times may vary depending on contract location and security requirements. Acquisition planners should coordinate with their respective EPA Security Management Division to estimate processing times.

G. Phase 4.2 Technical Evaluation Criteria Draft

Responsible Party: COR and CO/CS

If the APT has determined that a technical evaluation will be conducted for this acquisition, the COR and CO/CS must work together to determine the details of how the technical evaluation will be conducted. During this phase, the COR must provide draft technical evaluation criteria, names and qualifications of technical evaluation panel members, and other needed documentation associated with the technical evaluation process. Considerations such as scoring methodology (adjectival or color), oral presentations, low price technically acceptable versus best value, etc. will be discussed by the APT. The CO/CS must provide guidance and assistance to the COR as needed to finalize the documentation.

H. Phase 5: Market Research

Responsible Party: COR, CO/CS, OSDDBU

FAR Part 10 requires agencies to conduct market research prior to soliciting any acquisition greater than the Simplified Acquisition Threshold (SAT). For actions below the SAT, market research should be performed when adequate information is not available and the circumstances justify its cost. Market research is a critical aspect of acquisition planning and is used to identify sources, determine commerciality, and determine commercial terms and conditions, such as type of contract, payments, and warranties. Market research is also used to promote energy conservation, determine whether contract bundling is appropriate and facilitate the development of the Independent Government Estimate (IGE). While the FAR only requires market research to be conducted for actions greater than the SAT, it can still be beneficial to perform research for lower value acquisitions if the circumstances warrant the time and cost.

The extent and amount of market research performed varies based on the urgency, value and complexity of a contract. Higher value and more complex contracts warrant more market research. In some cases, use of previous market research may be adequate if it was for a similar contract and was conducted in the previous 18 months.

There are various methods used to perform market research, and the APT has great latitude in determining what is appropriate for a given acquisition. Internet research, sources sought notices, requests for information, reaching out to other government agencies, interviewing industry representatives and utilizing interactive online forums are just a few examples of effective market research techniques.

Communicating with industry is a particularly effective market research tool. In order to facilitate this communication, OAS has developed the [EPA Vendor Communication Plan](#) and the [Program Manager's Guide](#). These guides should be reviewed prior to conducting market research for all acquisitions with careful attention paid to the requirements in the plan for IT contracts. In addition to these resources, the Office of Management and Budget (OMB) has a number of initiatives to aid in communicating with vendors including an [Acquisition Collaboration How-To Toolkit](#) which details how to develop a collaboration event. The Toolkit describes the steps in creating, operating, and closing an event, as well as information on various collaboration platforms, such as social media tools. OMB has also initiated a “one-stop-shop” for vendors to search out collaboration opportunities across all agencies through the Beta.SAM.gov website. In order to facilitate the “one-stop-shop” concept, all government collaboration events must be posted to Beta.SAM.gov. EPA Contracting Officers/Contracting Specialists (CO/CS) can post collaboration opportunities to Beta.SAM.gov through EAS using [EPA's Instructions for Posting Events](#).

In performing market research, acquisition planners must take into consideration the policies in FAR Part 19 and perform due diligence in considering whether contracting or subcontracting opportunities exist for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. The Government Accountability Office (GAO) has upheld several protests regarding lack of market research in support of agencies' small business set aside determinations. For further information regarding small business set asides, see paragraph (E) below.

Increasing Competition

Market research is also used by acquisition planners to promote competition. In order to obtain quality goods and services at fair and reasonable prices, it is essential that the government specifies its needs, develops specifications and solicits offers in a manner that promotes and provides for full and open competition to the maximum extent practical. Acquisition planners need to be cognizant of the competition requirements in FAR Parts 6, 8 and 13, as well as posting requirements in FAR Part 5. Market research must be documented in the contract file. The type and extent of documentation should be appropriate to the size and complexity of the acquisition.

Potential Sources Including Req Govt Sources

In addition, as part of market research, the APT must consider the required sources of supplies and services. FAR Part 8 dictates that agencies acquire supplies and services using a descending order of priority unless an exception applies. Agency planners must familiarize themselves with all of the requirements of FAR Part 8 to ensure this order of priority is followed. In addition to the FAR, planners must also be cognizant of the products and services offered by FAR Part 8 sources such as [Federal Prison Industries](#), the Committee for Purchase from People Who are Blind or Severely Handicapped [Ability One](#) program, mandatory Federal Supply Schedules, and optional Federal Supply Schedules. In addition, the APT must consider existing mandatory strategic sourcing vehicles available for Agency

use. A current list of existing contract can be found at:
<https://oamintra.epa.gov/StrategicSourcing>

I. Phase 6: Small Business Concerns

Responsible Party: COR, CO/CS, OSDBU

This phase must be completed in collaboration with OSDBU.

In accordance with FAR 19.502-2, acquisitions exceeding the micro purchase threshold but not over the SAT are reserved for small businesses and must automatically be set aside unless the contracting officer determines there is not a reasonable anticipation of obtaining offers from two or more responsible small business concerns. If the CO does not set the acquisition aside, the reason must be documented in the contract file. The market research performed must support this determination.

For acquisitions above the SAT, the CO must set aside an acquisition for small business participation when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns, and award will be made at fair market prices. In addition to the above requirements, COs must determine whether opportunities, including subcontracting, exist for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. It is the government's policy to maximize opportunities for these concerns as much as possible.

In order to comply with the above, acquisition planners must be familiar with the requirements in FAR Part 19. In addition, EPA has specific contracting goals for each of the above concerns that must be met. It is critical that acquisition planners coordinate with OSDBU or the respective Small Business Program Managers (SBPMs) at Research Triangle Park, Cincinnati or one of the ten Regions at the earliest stage possible in an acquisition to determine whether or not an acquisition should be set aside. Coordination is determined by where the acquisition is initiated. For acquisitions over the SAT, EPA Form 1900-37 is used to obtain concurrence from OSDBU, RTP, Cincinnati or the Regional SBPM on a set aside determination. However, this form should not be the only form of communication with OSBP or the respective SBPM. OSDBU and respective SBPMs must be involved in the acquisition forecasting, as well as part of the APT and throughout the process until award. and respective SBPMs must be involved in the acquisition forecasting, as well as part of the APT and throughout the process until award.

For additional information, acquisition planners can refer to OSDBU's [Small Business Pocket Guide](#). This guide provides a concise overview of the various socioeconomic programs, as well as instructions on how to use the [North American Industry Classification System](#) (NAICS) which is the standard used to classify business size.

J. Phase 7: Required Common Contracting Research

Responsible Party: COR and CO/CS and OSDBU

Strategic Sourcing Considerations (BIC)

Strategic Sourcing is a structured process which optimizes the government's supply base while reducing total cost of ownership and improving mission delivery. Strategic Sourcing solutions are based on a robust analysis of spending patterns, the clear definition of business needs and requirements, and the alignment of government needs with supply market capabilities and commercial best practices. Strategic sourcing solutions are developed and implemented collaboratively with stakeholders.

All federal agencies are required by the Office of Management and Budget to have a Strategic Sourcing Program (SSP). EPA's SSP is implemented through the Business Analysis and Strategic Sourcing (BASS) office. The BASS office has been established to leverage EPA's buying power, reduce acquisition administrative costs, and develop long-term, mutually beneficial partnerships with best-in-class providers of products and services. EPA's SSP makes the acquisition process easier and less expensive through the use of Agency-wide contracts that are available for use by all EPA offices and Regions. The SSP is an ongoing program that continually researches, assesses and awards contract vehicles that maximize time and resource savings throughout the Agency. After Dec 2012, the SSP will include new contracts that were awarded using EPA's new SSP process. Prior to Dec 2012, there were a number of Agency-wide contracts placed that are available for use such as contracts for Information Technology, Superfund Support Services, Professional Services and Equipment and Supplies.

During the acquisition planning process, the APT must assess whether an existing contract that is available for Agency-wide use will meet the Agency's needs. This is the first source for acquiring supplies and services that must be considered before soliciting and awarding a new contract. To the extent that an existing contract will not satisfy the end-user's need, the Acquisition Plan should document the basis for this determination for two primary reasons: (1) to identify needs that were not previously recognized or considered when placing the original contract to ensure that such needs are considered for future follow-on procurements, if appropriate; and (2) to ensure that a rationale and supportable business case is made to pursue a separate contracting solution that justifies the time and expense. A list of current contracts can be found on the [OAS intranet](#). Contracts on this list that were awarded prior to December 2012 were not part of the formal SSP process; however, they are still available for Agency-wide use.

If there are no existing Agency-wide contracts that will meet the Agency's needs, the APT must consider, and if applicable, use one of the contracts under the Federal Strategic Sourcing Initiative (FSSI). FSSI contracts save time and money through leveraging the government's overall buying power. Examples of FSSI contracts include office supplies, domestic delivery services, software, print management and wireless communications. FSSI is continually assessed and updated.

K. Phase 7.1: Competition Justification **Responsible Party: CO/CS and COR**

Full and Open Competition

In the APP template, the CO/CS must enter one of the following: Full and Open Competition; Full and Open Competition after Exclusion of Sources; Other than Full and Open Competition

Reason for other than Full and Open Competition

In the APP template, the CO/CS must enter an explanation for other than full and open competition (FAR 13.106-1 if using SAP, FAR Subpart 6.3 if over SAT, and FAR 8.405-6 if Limited Sources applies). This does not replace the need for a JOFOC or Limited Sources Justification.

L. Phase 8: FINAL Market Research – Responsible Parties: COR and CO and OSDBU

Description of Final Market Research Efforts

The APT must create a market research report to include a description of market research efforts conducted (FAR Part 10, EPAAG 7.1.1, OAS Knowledge Management Site Market Research Toolkit <http://oamintra.epa.gov/?q=node/687>).

The market research template must be completed in conjunction with the report.

M. Phase 9: Contract Considerations - COR and CO

a. Phase 9.1 Post Planning Meeting/Pre-Solicitation for CO Responsible Party: CO

Contract Type

FAR 16.103 requires contracting officers to document the rationale for the contract type selected. The only exceptions to this requirement are 1) Fixed Price contracts below the SAT; 2) Firm-Fixed Price contracts other than those for Research and Design and Major Systems and 3) Sealed Bids Set Aside for Small Businesses.

The EAS APP module provides a section for documenting contract type. Questions that should be answered when documenting contract type include 1) Why that particular type is needed? 2) What are the risks associated with the contract type? 3) What resources does the agency have to manage the type selected? 4) If other than Fixed Price, what are the plans to transition to fixed price in the future if possible? In addition to these requirements, contracting officers must review the criteria in FAR 16.103(d) and EPAAG 16.1.1 to ensure all applicable information is included in contract type documentation. In addition, a separate written D&F may be required by regulations for certain types of

contracts. Individual D&F requirements can be found in the applicable FAR/EPAAR sections.

Incentives

Is this an incentives contract? Answer Yes or No. Reference FAR Part 16 and EPAAG 16.4.1 for further guidance. If yes, provide a draft incentive plan/award fee in the APP supporting documents.

Options FAR Subpart 17.2

In addition to acquisition planning for new contract actions, it is critical that contracting officers adequately prepare for the renewal of option periods and follow on contracts when options have expired. Contracting officers must be proactive in facilitating option renewals and set milestones for the various steps in the process. While it is ultimately the program office's responsibility to submit the necessary paperwork and funding for an option period or a contract renewal, the contracting officer will save valuable time by being proactive. Six months prior to the expiration of an option period, the contracting officer must use the notification feature in EAS to notify the contract level COR that the option period is expiring and provide a suspense date for the program office's paperwork. If the program office does not meet the provided suspense date, follow up notices must be sent. When notifying the program office for renewal of the last option year of a contract, the CO must also send an EAS notice that there are no more option periods available and that a new procurement may need to be initiated. Before a new procurement is initiated the CO/COR will determine if planning is needed for the follow-on contract. In addition to notifying the end users of their responsibilities, the CO must create and track milestones for the other critical steps in option renewals such as conducting market research, preparing a determination in accordance with FAR Part 17.207, and giving preliminary notification to the contractor in accordance with the contract.

If options are included: If options are anticipated, please indicate the number and type. A separate D&F in accordance with FAR 17.205 is required. Also indicate how options will be evaluated during the award process.

Multi-year contract FAR 17.105 (as applicable)

If this is a multi-year contract, please provide rationale. A separate justification in accordance with FAR 17.105 is required.

Commercial item or service Y/N

Indicate if this is a commercial item or service. Your market research should support this conclusion.

If no, could the requirement be modified to provide a commercial item or service?

Explain.

Special provisions, clauses or FAR deviations

Describe any special provisions, clauses or FAR deviations that may be required.

Contract Line Items

Discuss the anticipated contract line items required for this contract. If the requirement is not firm-fixed-price, discuss whether the contract line items can be structured in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts.

Contract Administration

Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced. (EPAAG 42)

b. Phase 9.2: Contract Considerations/Determination for COR

Responsible Party: COR

Advisory and Assistance Services (AAS)

In accordance with the definitions in FAR Part 2, advisory and assistance services means those services provided under contract by non-governmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions: 1) Management and support; 2) Studies, analyses and evaluations; and 3) Engineering and technical services.

Because advisory and assistance services closely support the performance of inherently government functions, proper management controls must be put in place to ensure the government maintains control and accountability. FAR 37.114 includes management controls for these types of services as well as other services that have the potential for influencing the authority, accountability and responsibilities of government officials. The COR must prepare and submit a discussion of management controls for acceptance by the CO. After CO acceptance, the CO will submit a copy of the management controls for higher level approval of the acquisition of the AAS in accordance with EPAAG 1.6.1-A.

Confidential Business Information

During the performance of a contract, the contractor may require access to many types of confidential business information (CBI) that EPA obtains and maintains. CBI includes trade secrets, proprietary, commercial, financial, and other information that is afforded protection from disclosure under certain circumstances as described in the Trade Secrets Act, the Freedom of Information Act, and Office of Management and Budget Circular A-130. The EPA also has regulations covering CBI which are contained at [40 CFR Part 2, Subpart B](#). Information covered by the Privacy Act includes groups of records about individuals under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual. The conditions of disclosure of Privacy Act information are described in the Privacy Act and EPA implementing regulations at 40 CFR Part 16. Additional guidance is contained in the Agency's Privacy Act Manual, Directive 2190.

Also considered CBI is enforcement-confidential information, and EPA internal management-confidential information. Enforcement-confidential information includes privileged records, and/or information compiled for law enforcement purposes (whether administrative, civil or criminal), that if disclosed, could reasonably result in disruption to the legal process or an enforcement action, or would reveal enforcement techniques. EPA's internal management-confidential information includes information used within the Agency that, if not afforded protection from disclosure, could result in unfair contracting practices, or may adversely affect Agency personnel or property. EPA Directive 2195, EPA's *Information Security Manual*, provides additional guidance regarding the above types of CBI.

During the acquisition planning phase, acquisition planners must determine if access to CBI by contractor/subcontractor personnel will be necessary during performance of the contract and if it is authorized. Common statutes used by EPA to justify CBI are listed below, most of which can be found at [40 CFR Part 2, Subpart B](#). The majority of these statutes require a written determination in accordance with 40 CFR 2.301(h)(2)(i).

- ❖ Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9604 (CERCLA)
- ❖ Resource Conservation and Recovery Act, 42 U.S.C. § 6901 (RCRA)
- ❖ Toxic Substances Control Act, 15 U.S.C. § 2601 et. seq. (TSCA)
- ❖ Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et. seq. (FIFRA)
- ❖ Clean Air Act, 42 U.S.C. § 1414, 7542, and 7607(a)
- ❖ Federal Water Pollution Control Act, 33 U.S.C. § 1318 and 1369(a) (Clean Water Act)
- ❖ Safe Drinking Water Act, 42 U.S.C. § 300j-4 (SDWA)
- ❖ Emergency Planning & Community Right-to-Know Act, 42 U.S.C. § 1103; 11021; 11022; 11023 (EPCRA)
- ❖ Noise Control Act, 42 U.S.C. § 4901 et seq.
- ❖ Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. § 301 et seq. (FD&C Act)
- ❖ Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1401 et seq. (MPRSA)
- ❖ Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. § 1901 et seq. (MVICSA)
- ❖ Privacy Act, as amended, 5 U.S.C. § 552a
- ❖ Other as authorized in EPA's Public Information Regulations, 40 C.F.R. Part 2(B):

When requiring CBI, appropriate clauses must be included in the solicitation and resultant contract to ensure that there is no improper contractor access to CBI, as well as to Privacy Act protected information, or other information, such as management or enforcement-confidential information. Management controls must be put in place to clearly identify the procedures or processes that must take place prior to release of any protected information to the contractor, requirements for confidentiality agreements, and limits on use and disclosure of the data by contractor personnel.

During contract administration, COs and CORs must review the work assignment (for existing contracts with WA) or delivery/task order to determine if contractor access to CBI is required for performance. If so, they must ensure that the release of this data is authorized and accomplished, in accordance with all relevant contract clauses and legal requirements. The PO and CO must ensure that the conditions for disclosure are met: (1) prior to CO approval of the work assignment or delivery/task order; and (2) prior to the PO providing the contractor access to this information.

Personal Services:

When contracting for services, there are a number of special considerations which acquisition planners must be aware. The first question to ask is whether the services are of a personal or non-personal nature. Personal services are discussed in FAR 37.104 and occur when the type of work results in the contractor's employees serving in an employee type role to the government. Conversely, under

non-personal services, the contractor's employees are not subject to the government's supervision. Under a non-personal service, the government is contracting for an end result versus an employee. Unless specifically authorized by statute, government agencies are prohibited from acquiring personal services. The reason for this is because the government is generally required to obtain its personnel through competitive hiring procedures. One exception to this rule that EPA acquisition planners may encounter is the employment of experts and consultants. When the requirements of 5 U.S.C 3109 are met, the government may contract for experts and consultants. If a contract for personal services is necessary, agency planners must ensure they are authorized by statute, that all of the requirements at FAR 37.104 are met, and review and approvals take place in accordance with EPAAG 1.6.1-A.

Training

- (1) Contractors perform a variety of jobs for EPA but may initially are unfamiliar with EPA protocols. When contractors have access to EPA systems, they may require training in order to use these systems effectively and safely. Additionally, contractors who work onsite, or who may act on behalf of the Agency, need to understand the objectives of the Agency. While the contractors may be trained in their areas of expertise, they may need additional guidance in specific Agency methods.
- (2) The training or instruction should be identified or described in the Statement of Work (SOW) or Performance Work Statement (PWS). The amount of training or instruction, type, frequency and any other details should be noted. If the specific courses are known, they should be listed. If the specific training details are unknown at the time of solicitation release and/or contract award, a general statement notifying the contractor that EPA-provided training/instruction may be required for performance of the contract.
- (3) Because the Agency is requiring the training or instruction, it will be at EPA's expense, and therefore, only that training which is necessary should be required. The contractor may charge the Agency for the subject training and/or instruction as allowable direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices.
- (4) If training is required to access specific systems and records, it should be identified or described along with the requisite training (e.g., if EPA computer access is required, then Information Security Awareness training is required). Training may include, but is not limited to, the following:

- ❖ Annual Records Management
- ❖ Information Security and Rules of Behavior
- ❖ Protecting Sensitive Information
- ❖ IT Security and Privacy Awareness Training
 - Specialized IT Security Awareness Training for Security Staff
- ❖ Environmental Management Systems/Safety and Health Management Systems Training
- ❖ Occupational, Safety and Health Training

- (5) If the contractor is to perform consistent with EPA protocols, instruction in these protocols should also be noted. Instruction may include the following:
- ❖ Tribal Government
 - ❖ Environmental Justice

Quality Assurance

When contracting for requirements that involve the collection, generation, use, or reporting of environmental data, and the design, construction, and operation of environmental technologies, a Quality Assurance Review Form (see EPAAG Appendix 46.2.1-D) must be used to ensure that quality requirements of FAR 46.202 and 52.246-11 are communicated to the CO, and to ensure that EPA-specific requirements (defined in CIO 2105.0 and CIO 2105-P-01-0) are met. More details can be found at FAR 46.202 and EPAAG Chapter 46.2.1.

Key Personnel

If this requirement will include key personnel which will require Government approval for substitutions, please provide a list of the key positions along with the length of time the initial key personnel will be required to remain on the contract, e.g. 90 days, 120 days, 12 months.

c. Phase 9.3 Contract Considerations/Determinations for CO **Responsible Party: CO**

Service Contracting

FAR Part 37 governs the use of service contracts. In addition to the FAR requirements, acquisition planners must be familiar with [OFPP Policy Letter 93-1](#). This Policy Letter provides guiding principles through the "best practices" concept that should help agencies develop, analyze, and perfect requirements for service contracts which, in turn, should help to improve contract management and administration. The following summarizes topics Agency planners need to be familiar with when acquiring services; however, this information is not all

inclusive. It is critical acquisition planners familiarize themselves with the FAR and OFPP requirements regarding service contracts.

Performance-Based

In accordance with FAR 37.102, performance-based acquisitions are the preferred method of acquiring services. Additionally, EPAAG Chapter 37 requires that all EPA contracts and orders for eligible services (see EPAAG Chapter 37 for definition of eligible services) be placed as performance-based acquisitions. A performance-based acquisition means the government is contracting for an end result rather than telling the contractor how to perform the work. Performance-based acquisitions use Performance Work Statements (PWS) and Statements of Objectives (SOO) rather than a Statement of Work (SOW). The government needs to define acceptable performance standards and have a plan for monitoring whether the contractor meets those standards. This is done through the use of a Quality Assurance Surveillance Plan which should be developed in conjunction with the PWS or SOO. FAR Subpart 37.6 prescribes policies and procedures for performance-based acquisition methods including instructions on writing PWSs and SOOs. EPAAG Chapter 37 provides specific EPA guidance. In addition to these resources, there is an OFPP guide titled *Best Practices for Performance-Based Contracting* which can be found on the [OFPP Procurement Policy webpage](#). The guide has been rescinded, but OFPP has made it available for information purposes. Additional information is available on [Dynamic Steps to PBA](#).

Acquisition Procedures

Indicate which of the following acquisition procedures will be used for this acquisition and explain the rationale behind the approach. FAR Part 8 Required Sources of Supply; FAR Part 12 Commercial Items (in conjunction with FAR Part 13,14 or 15); FAR Part 13 Simplified Acquisition Procedures; FAR Part 14 Sealed Bidding, FAR Part 15 Negotiation, Other.

Buy American Act

Indicate if this acquisition is subject to the Buy American Act. (Y/N). If an exception under FAR 25.103 applies, be sure to include a determination in the contract file.

Inherently Governmental Functions

Inherently governmental function means a function that is so intimately related to the public interest as to require performance by Federal Government employees. FAR Subpart 7.5 provides guidance on inherently governmental functions; however, OFPP Policy Letter 11-01, which was released Sep 12, 2011, provides updated policy and guidance. Agency planners need to be familiar with the

requirements of OFPP 11-01 to ensure that only federal employees perform work that is inherently governmental or otherwise needs to be reserved for the public sector. In accordance with OFPP 11-01, for procurement of services above the SAT, the contract file must include analysis that establishes, at a minimum:

- (1) The function to be contracted does not appear on the list of inherently governmental functions included in OFPP 11-01 Appendix A and does not otherwise qualify as an inherently governmental function, taking into consideration, as necessary, the following two tests:
 - a. Functions which involve the exercise of sovereign powers of the United States are governmental by their very nature. Examples of such functions that, by their nature, are inherently governmental include officially representing the United States in an inter-governmental forum or body, arresting a person, and sentencing a person convicted of a crime to prison. A function may be classified as inherently governmental based strictly on its uniquely governmental nature and without regard to the type or level of discretion associated with the function.
 - b. Functions requiring the exercise of discretion must be deemed inherently governmental if the exercise of that discretion commits the government to a course of action where two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders, and other guidance that: Identify specified ranges of acceptable decisions or conduct concerning the overall policy or direction of the action; and subject the discretionary decisions or conduct to meaningful oversight and, whenever necessary, final approval by agency officials.
- (2) A statute, such as an annual appropriations act, does not identify the function as inherently governmental or otherwise require it to be performed by Federal employees;
- (3) The proposed role for the contractor is not so extensive that the ability of senior agency management to develop and consider options or take an alternative course of action is or would be preempted or inappropriately restricted;
- (4) If a function is closely associated with an inherently governmental function (see OFPP 11-01 Appendix B) —
 - a. Special consideration has been given to using Federal employees to perform the function in accordance with applicable law and implementing guidance;
 - b. The Agency has sufficient capacity and capability to give special management attention to contractor performance, limit or guide the contractor's exercise of discretion, ensure reasonable identification of contractors and contractor work products, avoid or mitigate conflicts of interest, and preclude unauthorized personal services;
 - c. The Agency will comply with the checklist of responsibilities in OFPP 11-01 Appendix C; and
- (5) If the function is a critical function, the Agency has sufficient internal capability to control its mission and operations.

The above information summarizes some of the critical aspects of OFPP 11-01; however, it is not all inclusive. Agency planners should use the link above to review the policy in its entirety to ensure they understand all requirements as they relate to inherently government functions and acquisition planning.

Applicable Labor Laws

Indicate in the APP template which labor categories are applicable to this contract and how they are being applied. If either the Davis Bacon Act or Service Contract Act applies, be sure the solicitation includes applicable wage determinations. If the Service Contract Act applies and there is an existing Collective Bargaining Agreement with the incumbent contractor, be sure to include this in the solicitation.

Lease vs Buy

Guidance relative to lease versus purchase determinations for equipment is contained at FAR Subpart 7.4. The CO will perform the necessary analysis leading to a decision to lease or purchase equipment considering comparative costs and other factors. The CO may obtain assistance from the PO and the cost/price analyst, as necessary, and must document the analysis in the contract file.

Major Systems Acquisitions

Major systems acquisitions are governed by FAR Part 34 and OMB Circular A-109. The majority of EPA acquisitions do not fall under this category; however, it's incumbent upon acquisition planners to be familiar with the definition of major systems acquisitions to ensure acquisitions that do fall under this classification are conducted using the correct policies and procedures. In accordance with FAR Part 2, a major system "means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property." A system is a major system if a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$2 million or the system is designated a major system by the head of the agency responsible for the system. Examples of major systems provided in OMB Circular A-109 include the following:

- ❖ Analysis of agency missions
- ❖ Determination of mission needs
- ❖ Setting of program objectives
- ❖ Determination of system requirements
- ❖ System program planning

- ❖ Budgeting
- ❖ Funding
- ❖ Research
- ❖ Engineering
- ❖ Development
- ❖ Testing and evaluation
- ❖ Contracting
- ❖ Production
- ❖ Program and management control
- ❖ Introduction of the system into use or otherwise successful achievement of program objectives

Sustainable Acquisition/Green Procurement

Pursuant to [Executive Order 13834 Efficient Federal Operations -Acquisition Section 2\(g\)](#): Acquire, use, and dispose of products and services, including electronics, in accordance with statutory mandates for purchasing preference, Federal Acquisition Regulation (FAR) requirements, and other applicable Federal procurement policies.

Agencies are accountable for ensuring that all contract actions and purchases comply with the statutory requirements below, where applicable to the product or service. Agencies should prioritize products and services that meet more than one of the applicable requirements and are encouraged to procure products and services in a cost-effective manner that advance achievement of energy and environmental performance goals.

Statutory Mandates for Purchasing Preference: Agencies must give purchasing preference to products that:

- Meet minimum requirements for recycled content as identified by [EPA's Comprehensive Procurement Guideline](#) (CPG) Program (42 U.S.C. § 6962);25
- Are designated as biobased or [BioPreferred](#) by USDA. Agencies must also set yearly targets for number of biobased-only contracts awarded (7 U.S.C. § 8102); 26 and
- Are certified by [ENERGY STAR](#) or designated by [FEMP](#) as energy efficient products (42 U.S.C. § 8259b, 10 CFR part 436, subpart C).

Procurement of Substitutes for Ozone-depleting Substances: In accordance with 42 U.S.C. § 7671K and 7671L, agency procurement practices must maximize substitution of alternatives to ozone-depleting substances, identified under EPA's Significant New Alternatives Policy (SNAP) program. Procurement of Substitutes for Ozone-depleting Substances: In accordance with 42 U.S.C. § 7671K and 7671L, agency procurement practices must maximize substitution of alternatives to ozone-depleting substances, identified under [Significant New Alternatives Policy](#) (SNAP) program.

Agencies may also establish agency-specific standards, policies, programs, and incentives for sustainable acquisition, including but not limited to [SmartWay Transport Partnership](#) and [Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing](#) as long as they meet or exceed the statutory requirements in these Instructions.

Use of Category Management and Government-wide Acquisition Vehicles: In support of [The President's Management Agenda](#) to increase administrative efficiency, reduce duplicative efforts, and shift from low-value to high-value work, OMB's Office of Federal Procurement Policy (OFPP) is leading a government-wide [Category Management initiative](#). Category Managers are instructed to ensure that new solutions in their categories include relevant sustainability requirements, and agencies are instructed to use Category Management solutions to the maximum extent practicable, which can help them meet their sustainability goals and better leverage the government's buying power.

No matter what type of products or services are being purchased, whether they are office supplies, electronics, novelty and award items, construction, landscaping, or janitorial products, check first via the Green Procurement Compilation Tool to determine if the product can be purchased with recycled or biobased contents, energy efficiency, or environmentally preferable attributes. If so, BUY "GREEN".

Make or Buy

Discuss any considerations given to make-or-buy programs. (Applicable for negotiated acquisitions requiring certified cost or pricing data whose estimated value is \$12.5 million or more (except R&D). See FAR 15.407-2 for more info.)

d. Phase 9.4 As Applicable: Government Property **Responsible Party: COR**

Government-Furnished Property

Generally, EPA does not provide property to its contractors. However, the Agency may provide existing property to contractors and provide or allow contractors to acquire new property if a waiver is obtained in the form of a Government Property Analysis Worksheet. POs should refer to the *CO/PO Guide for the Management of Government Property under EPA Contracts* included in Chapter 45 of this manual as well as the [EPA Personal Property and Procedures Manual](#) for more information on furnishing Government property or authorizing contractors' acquisition of property.

- e. **Phase 9.5 As Applicable: For cost reimbursement and/or high-risk acquisitions**
Responsible Party: CO/CS

Trade Offs/ Risks

Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. FAR 7.105a(7).

- f. **Phase 9.6 As Applicable: Pertains to FAR 11.6 Only**
Responsible Party: CO/CS

Priorities

When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them.

N. Phase 10: Budget Information **Responsible Party: COR**

Budget

Is the estimated total cost for this planned procurement within the program's extramural budget? If not, provide rationale as to how the funds will be procured for this contract, e.g. buy in from other offices.

Incremental Funding of Severable Services

As provided in EPAAG Subsection 32.7.5, non-severable services may not be incrementally funded. Severable services may be incrementally funded, however, by using either clause EPA-B-32-103/*Limitation of Government's Obligation* (for procuring fixed-price, time-and-materials or labor-hour services), or EPA-B-32-101/*Limitation of Funds Notice* (for procuring cost-reimbursable services).

As described in 32.7.5, severable services are acquired to meet multiple needs of the Agency that are expected to arise during the period of performance, and they are not performed as a "single undertaking." Rather, severable services can be conceptually separated into components that each independently provide value to meet agency needs.

Severable services tend to be “continuing and recurring in nature,” and there is no discrete and definable “end goal.”

By comparison the Agency acquires non-severable services in order to meet needs that exist at the time the Agency begins to procure the service, although it may take the entire duration of the contract for the contractor to meet that need. Non-severable services are performed as “a single undertaking,” and typically result in a discrete and definable “end goal.”

In accordance with EPAAG 32.7.5.5, *Policy*, the work severability determination is made and documented as part of the preaward acquisition planning process. Whether a service may be incrementally funded depends on the nature of the work being ordered and not on the contract type.

In the formulation of the APP, COs must discuss and document EPAAG Subsection 32.7.5 contract funding considerations, addressing in detail the supporting factors and/or rationale used in any work severability determination, including the required schedule for obtaining adequate incremental funds and the preparation of required Determination & Findings (D&Fs).

O. Phase 11: Final Approvals
Responsible Party: COR

Upon completion of the phased acquisition planning process set forth above, a final procurement package with the following documents (as applicable) must be submitted prior to soliciting offers. These documents should have been completed as part of the phased acquisition planning approach outlined above. All documents developed by the APT during the phased acquisition planning process must be uploaded into the APP in EAS. **Note that documents that are for internal use must be uploaded as supporting documents and documents that will be sent to the contractor must be uploaded as attachments.** The COR, in combination with the JRO, must ensure that all required program office reviews of the APP requirement are completed, documented and uploaded into EAS, including SRO concurrence when required. The final approved APP package must be routed to the CO for approval in EAS. Once the APP has been approved and released in EAS by the Contracting Officer, the CO will upload the final documents in the PR associated with the APP for use in creating the solicitation.

ITEM	DESCRIPTION/REFERENCE
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Requirements Document (PWS / SOW / SOO / Supplies Desc.)	The document should be performance based unless rationale is provided in APP why it can't be. Be sure the document includes any EPA specific requirements the contractor may have to adhere to such as the EPA Survey Management Handbook, the EPA Peer Review Handbook , required reports, etc. Reference: FAR 11.101(a), 37.6
Quality Assurance Surveillance Plan	Reference: FAR 37.604, 46.401(a); EPAAG 37.6.1
Independent Government Estimate	See "EPA Guide for Preparing Independent Government Estimates" at EPAAG 7.1.3-A. Reference: FAR 4.803(a)(7), 7.105(a)(3); EPAAG 7.1.1
Quality Assurance Review Form	Reference: FAR 46; EPAAG 46.2.1, 7.1.1
Reporting Requirements	Reference: EPAAR 1511.011-70
Government Furnished Property - List/Determination	Reference: FAR 45; EPAAG 45.1

Government Property Analysis Worksheet (GPAW) and Justification/Waiver	
Nomination of the Contracting Officer's Representative (COR)	EPA Form 1900-65. Also, see FAC-C COR guidance on the OAS intranet training page . Reference: EPAAG 1.6.5
Multiple Appropriations	If the contract or subsequent task/delivery orders will be funded from multiple appropriations, program office should attach approval from the Director of the Financial Management Division.
Market Research	See Phase 5 Above, "Market Research"
Advisory & Assistance Services (AAS) / Management Controls	Reference: FAR 37.203 ; FAR 37.114
Organizational Conflict of Interest Strategy/Mitigation Plan (if applicable)	See EPAAG 9
Government Furnished Data	List of data to be provided by the government. See EPAAR 1545.107(b)

Justification for Leasing Motor Vehicles	If applicable, see FAR 8.1102
Organizational Membership Information	For any simplified acquisition for membership in an association or other organization, the requiring office must certify on the EPA Form 1900-8 that the primary purpose of the membership is to obtain direct benefits for EPA necessary to the accomplishment of its functions or activities. If justified, the CO will then acquire the membership in the name of the Agency, not in the name of any individual.
Human Research Subjects	If applicable, provide all documents required by EPA Order 1000.17
Confidential Business Info	See Section M. b. Above, "Contract Considerations for COR"
Technical Evaluation Criteria	Draft evaluation criteria, oral presentation instructions, names and qualifications of technical evaluation panel members, and a sample work assignment or task order. Reference: FAR Part 15, FAR Subpart 8.4, FAR 13.106, and FAR 16.505(b)(1)(iv)(c))

Office of Small Business Programs Review (EPA 1900-37)	Reference: EPAAR 1519.501(a), 1519.201-72(c)(3); FAR 7.104(d)(1)
FITARA Approval to Purchase IT	Reference: EPAAG 39.1.1

7.1.1.5.7 Reviews and Approvals

In addition to the reviews and approvals required throughout this document and those in EPAAG 1.6.1-A, acquisition planners must review the [EPA Delegation Manual](#) and ensure all applicable policies and procedures are followed including obtaining approval to purchase Information Technology in accordance with EPAAG 39.1.1. All reviews/approvals must be documented in the official contract file prior to solicitation.

Attachments:

EPAAG 7.1.1-A, PALT Standards

EPAAG 7.1.1-B, Advanced Procurement Plan Template

EPAAG 7.1.1-C, Requisition How to Guide

EPAAG 7.1.1 Attachment A, PALT Standards, October 2013

		ACQUISITION PLANNING			EXECUTION						TOTAL PALT
		Milestone # 1	Milestone # 2	PALT (Calendar Days)	Milestone # 3	Milestone # 4	Milestone # 5	Milestone # 6	Milestone # 7	PALT (Calendar Days)	
Procurement Type	Dollar Value	Acquisition Planning Complete	Procurement Package Complete	Planning PALT	Solicitation Issued	Proposals Received	Tech Evaluations Complete	Final Proposals Received	Award Complete	Execution PALT	
Simplified Acquisitions Procedures	Micropurchase	5	5	10	5	5	N/A	N/A	5	15	25
	Above Micro & Under SAT	15	15	30	10	10	7	8	10	45	75
	Above SAT- \$6.5M (Commercial Test Procedures)	45	45	90	30	20	15	15	30	110	200
FSS/GSA Order Including BPA Orders (no SOW)	Micropurchase	5	5	10	5	5	5	5	10	30	40
	Above Micro & Under SAT	15	15	30	10	10	10	5	10	45	75
	Over SAT	30	30	60	15	15	15	15	30	90	150
FSS/GSA Order Including BPA Orders (w/SOW)	Micropurchase	5	5	10	5	5	5	5	10	30	40
	Above Micro & Under SAT	30	30	60	15	10	10	10	15	60	120
	Over SAT	45	45	90	15	15	15	15	30	90	180
Sealed Bids Including 2 Step	Up to \$1M	30	30	60	15	30	15	15	15	90	150
	Above \$1M up to \$10M	45	45	90	30	30	30	30	30	150	240
	Over \$10M	60	60	120	30	45	45	30	30	180	300
Competitive Proposals (RFP)	Up to \$1M	45	45	90	30	30	15	15	30	120	210
	Above \$1M up to \$10M	60	60	120	30	30	30	30	30	150	270
	Over \$10M	90	60	150	45	30	45	30	60	210	360

EPAAG 7.1.1 Attachment A, PALT Standards, October 2013

		ACQUISITION PLANNING			EXECUTION						TOTAL PALT
		Milestone # 1	Milestone # 2	PALT (Calendar Days)	Milestone # 3	Milestone # 4	Milestone # 5	Milestone # 6	Milestone # 7	PALT (Calendar Days)	
Procurement Type	Dollar Value	Acquisition Planning Complete	Procurement Package Complete	Planning PALT	Solicitation Issued	Proposals Received	Tech Evaluations Complete	Final Proposals Received	Award Complete	Execution PALT	
Noncompetitive Actions Includes sole source, 8A, NISH, etc.	Up to \$1M	30	30	60	30	30	15	15	30	120	180
	Above \$1M up to \$10M	45	45	90	30	30	30	30	30	150	240
	Over \$10M	60	60	120	45	30	30	30	45	180	300
BPA Orders FAR 13	Any Amount	5	5	10	5	5	5	5	10	30	40
Delivery Order (EPA)	Any Amount	15	15	30	5	5	5	5	10	30	60
Task Order (EPA)	Any Amount	30	30	60	10	30	15	10	10	75	135
Work Assignment	Any Amount	15	15	30	5	30	15	N/A	10	60	90
Admin Mod/Funding Mod	Any Amount	N/A	N/A	N/A	N/A	N/A	N/A	N/A	15	15	15
Unilateral Mod (Option Terms, Option Quantities, Award Terms)	Any Amount	N/A	30	30	N/A	N/A	N/A	N/A	60	60	90
Change Order/ Definitization	Up to \$1M	5	5	10	(mod issued) 10	10	10	15	15	60	70
	Above \$1M up to \$10M	10	10	20	(mod issued) 10	15	15	20	20	80	100
	Over \$10M	15	15	30	(mod issued) 10	30	20	30	30	120	150
Bilateral Mod	Up to \$1M	10	10	20	10	10	10	15	15	60	80
	Above \$1M up to \$10M	15	15	30	10	15	15	20	20	80	110
	Over \$10M	20	20	40	10	30	20	30	30	120	160

EPAAG 7.1.1 Attachment B (July 2020)
EPA Advance Procurement Plan Template
Sample Only—Actual APP to Be Created in EAS

Advanced Procurement Plan (APP) Template

When completing this APP template, the APT shall refer to the detailed information provided in EPAAG 7.1. This information will assist the APT in completing the questions set forth below and should be reviewed for each question set forth below.

Initial Step

Submit the APP and \$0 PR in EAS with the following template questions completed and the following documents attached: \$0 PR + FITARA approval (if required) + Preliminary Market Research + IGCE + PWS + EPA Form 1900-65¹

Responsible Party: COR

1. **Initial Start Date** - Input the current date
2. **PR Number** - Input the PR number associated with the APP
3. **PWS/SOW/Specifications Submitted?** Y/N
4. **IGCE Submitted?** Y/N
5. **COR Nomination** – EPA Form 1900-65b¹ Submitted? Y/N
6. **Contracting Office Representative (COR)** - Enter the Contracting Officer Representative (COR) for this planned acquisition. Include phone number and email address.
7. **COR Alternate** - Enter the Contracting Officer Representative (COR) Alternate for this planned acquisition. Include phone number and email address.
8. **Acquisition Title** - Input the title of this acquisition.
9. **Association with Acquisition Forecast** - Does this APP go with an associated item provided in your forecast submission to OAS/OSDBU? If “yes” then please enter the unique record identifier from the forecast database.
10. **Link with Strategic Plan** - Describe how this acquisition links back to the strategic plan for the Agency.
11. **Description of Requirement** - Enter the description of the requirement including a statement of need and the type of action, e.g. new contract, follow on, task order, etc.
12. **Period of Performance** - Enter the anticipated performance period including all option periods.
13. **Required Performance/Delivery Date with Explanation** - What date do services need to begin or products be delivered in order to meet the government’s needs? Enter the date in the format (mm/dd/yyyy). What is this date based on?
14. **Estimated Total Cost (All Options)** - Enter the estimated total cost for this planned procurement. If this is for an indefinite quantity contract, include minimum/maximum quantity information.
15. **Required Award Date** - What date does this contract need to be awarded in order to meet the required performance date above? Be sure to factor in considerations such as crossover training from the current contractor, obtaining security clearances for contractor employees, mobilization, delivery, etc. Enter the date in the format (mm/dd/yyyy).

¹ On EPA Form 1900-65b, block 4, Contract Number, insert APP Number and \$0 Requisition Number

16. **Historical information on previous contract** - If a follow on, include existing contract number, contract amount, name of contractor, number and size status of previous offerors included in the competitive range, and whether the contract was awarded under the 8(a) program or as a small business set aside.
17. **Information Technology Requirements – EPAAG 39.1.1, FAR Part 39, EPS Exhibit 300, OMB 25 Point Plan, Section 508 Compliance (Y/N)** - Indicate if this acquisition is for Information Technology. If so, be sure to consider FAR Part 39, EPS Exhibit 300, OMB 25 Point Plan, Section 508 Compliance (accessibility for persons with disabilities), and compliance with OMB Contracting Guidance to Support Modular Contracting and Internet Protocol (FAR 11.002(g)). How will each of these requirements affect the acquisition? Please note that purchases of information technology, regardless of price, must meet the IT acquisition approval requirements contained under EPAAG 39.1.1. Additional information on IT acquisition approval can be found here:
<https://usepa.sharepoint.com/sites/oei/OCAPPM/FITARA/ITAcquisitionApproval/SitePages/Home.aspx>
18. **Preliminary Market Research/Information Gathering** - For acquisitions over the SAT, document the market research that was conducted by the COR, e.g. potential sources, commerciality, and commercial terms and conditions, such as type of contract used in commercial world, payments, and warranties.

Phase 1: Assign CO and CS

Responsible Party: OAS

19. **Contracting Officer** - Input the contracting officer for this acquisition. (Will be completed by OAS or the Regional Office when Contracting Officer/Specialist is assigned.) Include phone number and email address.
20. **Contract Specialist** - Enter the name of the Contracting Specialist for this planned acquisition. (Will be completed by OAS or the Regional Office when Contracting Officer/Specialist is assigned.) Include phone number and email address.

Phase 2: Milestones

Responsible Party: CO

21. Planned Date - Complete APP
22. Planned Date - Complete Procurement Package
23. Planned Date - Issuance of the Synopsis
24. Planned Issuance of Solicitation
25. Planned Date - Receipt of Proposals
26. Planned Date - Evaluation of Proposals
27. Planned Date - Determination of Competitive Range
28. Planned Date - Beginning Negotiations
29. Planned Date - Completion of Negotiations
30. Planned Date - Final Evaluation and Submission of TEP/TET report
31. Planned Date - Source Selection Decision
32. Planned Date - Contract Preparation
33. Planned Date - Contract Review
34. Planned Date - Contract Award

Phase 3: Mandatory Planning Kickoff Meeting

Responsible Party: CO

35. **Date Meeting Occurred** - Input the date the first planning kickoff meeting was held and the parties that attended

Phase 4: Pre-planning Required

Responsible Party: COR

36. **NAICS Code** - Enter the appropriate North American Industry Classification System (NAICS) code, the title of the NAICS code, and the small business size standard for the procurement. The small business size standard is expressed as a dollar value or a number. The size standard establishes the maximum limitation for earnings of the number of employees an organization can have in order to be considered a small business. For more information on NAICS Codes, visit the Internet at: http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.

Phase 4.1: Additional Reviews (Security/Conferences)

Responsible Party: COR

37. **Contractor Conflicts of Interest – FAR Part 9, EPAAR Part 9 and EPAAG 9 (Y/N)** - Indicate if Contractor Conflicts of Interest (COI) are applicable to this acquisition. Summarize the plan of action to address COIs.
38. **Conferences – (Y/N)**: Is this acquisition for a conference? If so, ensure the required procedures are adhered to, such as submitting the EPA Form 5170, *Conference Activities Spending Request*, for approval. See the following toolkit for additional resources:
https://usepa.sharepoint.com/sites/OARM_Community/oam.kms/Toolkits/Conferences.aspx
39. **HSPD 12 Requirements (Y/N) – Aug 2019 Flash Notice on Personnel Security System (PSS) 2.0** - Indicate if this acquisition is subject to HSPD 12 Requirements. If so, be sure to include these requirements in the PWS/SOW. See Aug 2019 Flash notice for additional information

Phase 4.2: Technical Evaluation Criteria Draft

Responsible Party: COR + CO/CS + TEP panel

40. **Technical Evaluation (FAR Part 15, EPAAR Part 1515, FAR Subpart 8.4, FAR 13.106, and FAR 16.505(b)(1)(iv)(c))** - Indicate if technical evaluations are anticipated. (Y/N). If yes, provide details regarding how evaluations will be conducted, e.g. adjectival or color scoring? Will oral presentations be allowed? In addition, the following must be drafted and included in the final APP supporting documents as needed: evaluation criteria, oral presentation instructions, names and qualifications of technical evaluation panel members, etc.

Phase 5: Market Research

Responsible Party: COR + CO/CS + OSDU

41. **Pre-solicitation Efforts/Vendor Communication (FAR 15.201, FAR 14.207, EPAAG 7, EPA Vendor Communication Plan & OMB Mythbusting Memos)** - Describe any planned efforts to increase industry participation such as draft solicitations, exchanges with industry prior to receipt of proposals (FAR 15.201), pre-solicitation conferences (FAR 14.207) and other means of stimulating industry involvement. Review the EPA Vendor Communication Plan and describe how its requirements will be met for this acquisition.
42. **Increasing Competition (Required for cost reimbursement/high risk acquisitions and/or any other acquisition where competition is limited)** - Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition to include subcontracting opportunities. FAR 7.105(b)(2).

43. **Potential Sources Including Required Government Sources (FAR Part 8) and mandatory Strategic Sourcing Solutions (EPAAG 8.0.100)** - Enter potential vendors for this acquisition. This should include required government sources IAW FAR Part 8 and OAS' mandatory strategic sourcing vehicles. These mandatory sources can be found here: <https://oamintra.epa.gov/StrategicSourcing>. Indicate the size status of all potential vendors.

Phase 6: Small Business Concerns

Responsible Party: COR + CO/CS + OSDBU

44. **Small Business Set-Aside (Y/N)** - Indicate if a Small Business Set-Aside could be used for this acquisition.
45. **8(a) Competitive Set-Aside (Y/N)** - Indicate whether an 8(a) Competitive Set-Aside could be used for this acquisition.
46. **8(a) Non-Competitive Set-Aside (Y/N)** - Indicate whether an 8(a) Non-Competitive Set-Aside could be used for this acquisition.
47. **Economically Disadvantaged Women-Owned Small Business Set-Aside (Y/N)** - Indicate whether an Economically Disadvantaged Women-Owned Small Business Set-Aside could be used for this acquisition.
48. **Women-Owned Small business Set-Aside (Y/N)** - Indicate if a Women-Owned Small Business Set-Aside could be used for this acquisition.
49. **HUBZONE Non-Competitive Set-Aside (Y/N)** - Indicate whether a HUBZONE Non-Competitive Set-Aside could be used for this acquisition.
50. **Service-Disabled Veteran-Owned Business Set-Aside (Y/N)** - Indicate whether a Service-Disabled Veteran-Owned Business Set-Aside could be used for this acquisition.
51. **Service-Disabled Veteran-Owned Business Sole Source Set-Aside (Y/N)** - Indicate whether a Service-Disabled Veteran-Owned Sole Source Set-Aside could be used for this acquisition.
52. **Summary of Set Aside Recommendations** - Provide a summary to support your recommendations above. Potential sources listed above and market research should support this recommendation.
53. **Contract Bundling - FAR Part 7, EPAAG 7.1.1.2 (Y/N)** - Indicate if this is a bundled requirement? If yes, describe how the requirements of FAR Part 7 and EPAAG 7.1.1.2 will be met.

Phase 7: Required Common Contracting Research

Responsible Party: COR + CO/CS + OSDBU

54. **Strategic Sourcing Considerations (BIC) (EPAAG 8.0.100)** - Indicate whether any existing agency wide strategic sourcing solutions or contracts under the Federal Strategic Sourcing Initiative (FSSI) will meet the Agency's needs. Provide the required waiver to justify if one exists but will not be utilized per EPAAG 8.0.100.

Phase 7.1: Competition Justification

Responsible Party: CO/CS + COR

55. **Full and Open Competition** – check one of the boxes below
 Full and Open Competition ()
 Full and Open Competition after Exclusion of Sources ()
 Other than Full and Open Competition ()
56. **Reason for Other Than Full and Open Competition (if Applicable)** - Enter an explanation for other than full and open competition (FAR 13.106-1 if using SAP, FAR Subpart 6.3 if over SAT,

and FAR 8.405-6 if Limited Sources applies). This does not replace the need for a JOFOC or Limited Sources Justification.

Phase 8: FINAL Market Research Report

Responsible Party: COR + CO/CS + OSD/BU

57. **Description of Market Research Efforts** – Based on the information gathered in the phases set forth above, complete a market research memorandum as required by FAR Part 10

Phase 9: Contract Considerations

Responsible Party: COR and CO

Phase 9.1: Post Planning Meeting / Pre-solicitation for CO

Responsible Party: CO/CS

58. **Contract Type: See FAR Part 16 for the various types of contracts** - Per FAR 7.105, discuss the rationale for the selection of the contract type. In accordance with FAR 16.103(d) and EPAAG 16.1.1, document why the particular contract type was selected. Be sure to include all the required documentation as referenced in FAR 16.103(d). In addition, if this is for an indefinite quantity contract and multiple awards are not anticipated, provide rationale in accordance with FAR 16.504(c)(1)(C). If the contract type is not fixed-price, discuss the strategy to transition to firm-fixed price to the maximum extent practicable. Note: This section does not replace the need for required D&Fs such as those for use of cost reimbursement, personal services, etc.
59. **Incentives (FAR Part 16 and EPAAG 16.4.1)** - Will this requirement include an incentive for the contractor to perform, e.g. award fee or award term? (Y/N) If yes, provide a draft incentive plan/award fee plan in the APP supporting documents.
60. **Options FAR Subpart 17.2 (Y/N)** - If options are anticipated, indicate the number and type. A separate D&F in accordance with FAR 17.205 is required.
61. **If Options are included** - Describe how options will be evaluated during the award process.
62. **Multi-Year Contract FAR 17.105 (Y/N)** - If this is a multi-year contract, provide rationale. A separate justification in accordance with FAR 17.105 is required.
63. **Commercial Item or Service (FAR Part 12) (Y/N)** - Indicate if this is a commercial item or service. Your market research should support this conclusion.
64. **If No, could the requirement be modified to provide a commercial item or service (Y/N) - Explain rationale.**
65. **Special provisions, clauses or FAR deviations** - Describe any special provisions, clauses or FAR deviations that may be required.
66. **Contract Line Items** - Discuss the anticipated contract line items required for this contract. If the requirement is not firm-fixed-price, discuss whether the contract line items can be structured in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts.
67. **Contract Administration** - Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced (EPAAG 46). Note: This does not replace the need for a Quality Assurance Surveillance Plan when required by FAR Subpart 46.4.

Phase 9.2: Contract Considerations/Determinations for COR

Responsible Party: COR

68. **Advisory and Assistance Services – FAR Part 37 (Y/N)** - Is this contract for Advisory and Assistance Services? What percentage of work for this new procurement will be Advisory and Assistance Services? Note: This does not replace the need for the approvals required by EPAAG Chapter 1.
69. **Confidential Business Information – EPA Order 1900. 1A, EPAAR 1509.505-4, EPAAG 7, 40 CFR(2)(B) (Y/N)** - Indicate if Confidential Business Information is applicable to this acquisition. If yes, identify the authority (statute) being used to provide CBI and document in accordance with 40 CFR (2)(B).
70. **Personal Services – FAR Part 37 (Y/N)** - Indicate if this contract is for personal services. If yes, cite the statutory authority authorizing personal services along with an explanation as to how the services fall under the statutory authority. Obtain required approvals and legal review IAW EPAAG Chapter 1 and document the file IAW FAR 37.103. See FAR 37.104 for more information.
71. **Training (Y/N)**– If this acquisition will require the contractor to attend training during performance of the contract, explain the rationale for why the training is required. Ensure the training is identified in the Statement of Work.
72. **Key Personnel – EPAAR 1552.237-72 (Y/N)** - If this requirement will include key personnel which will require Government approval for substitutions, provide a list of the key positions along with the length of time the initial key personnel will be required to remain on the contract, e.g. 90 days, 120 days, 12 months.

Phase 9.3: Contract Considerations/Determinations for CO

Responsible Party: CO

73. **Suitable for Performance-Based (FAR Subpart 37.6, EPAAG 7.1.1.5.5 III, L, 2) (Y/N)** - If this is a service contract, indicate if this will be performance-based. If no, provide rationale for not conducting a performance-based acquisition (see FAR 37.102(a), FAR 16.505(a)(3)).
74. **Acquisition Procedures** - Indicate which of the following acquisition procedures will be used for this acquisition and explain the rationale behind the approach. FAR Part 8 Required Sources of Supply; FAR Part 12 Commercial Items (in conjunction with FAR Part 13,14 or 15); FAR Part 13 Simplified Acquisition Procedures; FAR Part 14 Sealed Bidding; FAR Part 15 Negotiation; or Other.
75. **Buy American Act – FAR Part 25** - Indicate if this acquisition is subject to the Buy American Act. (Y/N). If an exception under FAR 25.103 applies, be sure to include a determination in the contract file.
76. **Inherently Government Functions – FAR Subpart 7.5, EPA Order 1900-2, OFPP Policy Letter 11-0 (Y/N)** - Have inherently Government Functions been considered (Y/N)? How will this impact the acquisition?
77. **Applicable Labor Laws – FAR Part 22** - Indicate in the space below which labor categories are applicable to this contract and how they are being applied. If either the Davis Bacon Act or Service Contract Act applies, be sure the solicitation includes applicable wage determinations. If the Service Contract Act applies and there is an existing Collective Bargaining Agreement with the incumbent contractor, be sure to include this in the solicitation.
78. **Lease vs. Buy – FAR Subpart 7.4 (Y/N)** - If this is for equipment, document the lease vs. buy analysis performed. Attach price analyses in the APP supporting documents as needed.
79. **Major System Acquisition – EPAAG Section 7.1.155 (C)(p), OMB Circular A-109, FAR Part 34 (Y/N)** - If yes, include appropriate documentation in accordance with OMB Circular A-109. Also,

discuss the plan for testing and evaluation. If an Earned Value Management System is to be used, discuss how it will be employed and analyzed.

80. **Green Procurement & Environmental/Energy Conservations Objectives – FAR Part 23, OAS Green Procedure Intranet Site** - Discuss all applicable environmental energy conservation objectives associated with the acquisition, the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally- related requirements to be included in the solicitation and contract. Be sure to consider EPA Green Procurement procedures (EPAAG 23). How will these procedures impact the acquisition?
81. **Make or Buy (FAR 15.407-2)** - Discuss any considerations given to make-or-buy programs. (Applicable for negotiated acquisitions requiring certified cost or pricing data whose estimated value is \$12.5 million or more (except R&D). See FAR 15.407-2 for more info.

Phase 9.4: As Applicable: Government Property

Responsible Party: COR

82. **Government-Furnished Property (EPAAG 45, FAR Part 45 and EPAAR 1552.245-70) (Y/N)** - Indicate if government-furnished property is planned for this acquisition. If yes, complete the Government Property analysis worksheet (GPAW) and describe all proposed GFP. A list of GFP can be added by going to the APP supporting document folder and uploading your additional pages into EAS as a supporting document.
83. **Government Information to be Provided (e.g. manuals, drawings and data) (Y/N)** - Indicate whether government information will be provided for this planned acquisition such as manuals, drawings, and/or data. If yes, describe and provide a list of all government information to be provided. The contracting officer must ensure the posting requirements at FAR 5.102 are met.

Phase 9.5: As Applicable: For cost reimbursement and/or high-risk acquisitions

Responsible Party: CO/CS

84. **Trade Offs (Only required for cost reimbursement and/or high-risk acquisitions)** - Discuss the expected consequences of trade-offs among the various cost, capability or performance and schedule goals. See FAR 7.105(a)(6)
85. **Risks (Only required for cost reimbursement and/or high-risk acquisitions)** - Discuss technical, cost and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. See FAR 7.105(a)(7)

Phase 9.6: As Applicable Pertains to FAR 11.6 only

Responsible Party: CO/CS

86. **Priorities, Allocations, and Allotments (FAR Subpart 11.6)** - When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them.

Phase 10: Budget Information

Responsible Party: COR

87. **Budget** - Is the estimated cost of this procurement within the program's extramural budget? If not, provide rationale as to how the funds will be procured for this contract, e.g. buy in from other offices.

88. **Estimated Initial Funds** - Enter the estimated initial funding that will be provided for this acquisition. If the proposed contract or its task/delivery orders will be funded from more than one appropriation, provide rationale for use of multiple appropriations and methodology for allocating costs among appropriations. The rationale for multiple appropriations must include an approval from the Director of Financial Management Division in the supporting documents. See EPA's Administrative Control of Appropriated Funds Manual (RMD 2520, Release 3.2, dated February 4, 2008), Chapter 4.J .
89. **Severable vs. Non-Severable** – Discuss whether the work contained in the PWS/SOW/SOO are severable or non-severable services. If the services are severable, provide the rationale if the contract will be incrementally funded. If the services are non-severable, discuss how the program office will ensure they are able to fully fund the contract.
90. **Cost Goals (Only required for cost reimbursement and/or high-risk acquisitions)** - Discuss the cost goals and rationale behind them. Discuss the following as appropriate: Lifecycle Cost, Design to Cost, Application of Should Cost. See FAR 7.105(a)(3)

Phase 11: Final Approvals

Responsible Party: COR

91. Review and Approval in EAS – COR shall obtain and document needed signatures in the Program Office and route the finalized APP to the CO for approval



REQUISITION HOW TO GUIDE

Requisition How to Guide

Office of Acquisition Management, Policy Training & Oversight Division

January 2017



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Requisition - How to Guide

Purpose:

This is a requisition quick start guide; developed to assist Requisitioners, who have taken the initial EAS training, to create a complete and accurate requisition. This is intended as a guide and does not represent comprehensive instructions for creating a requisition. For additional support with creating a requisition, please contact the EAS Helpdesk at 202-564-2327 or enter a helpdesk ticket at: <https://oam servicedesk.epa.gov/ehelpdesk/login.glml#>. Additional resource, the PRISM 7.2 Users Guide can be found at: <http://easinfo.epa.gov/resourcecenter/prism-72-requisitions-user-guide>.

Target Audience:

EPA staff required to complete Requisitions, who have gone through the initial EAS training.

When and why do you need a Requisition?

EPA staff must initiate a requisition in the EPA Acquisition System (EAS) for supplies or services that will require the execution of a contract, task order/delivery order or purchase order. The requisition clearly defines the requirement, identifies the Acquisition Office/Buyer, when the requirement is needed, for supplies where they will be delivered and commits the funding for the requirement. Additionally, the Requisition provides a way to provide the documentation needed from the program office for the supplies or services being bought.

List of documents to get you going...

Below is an example of the types of supporting documents and attachments that may be needed, depending on the supplies or services being bought:

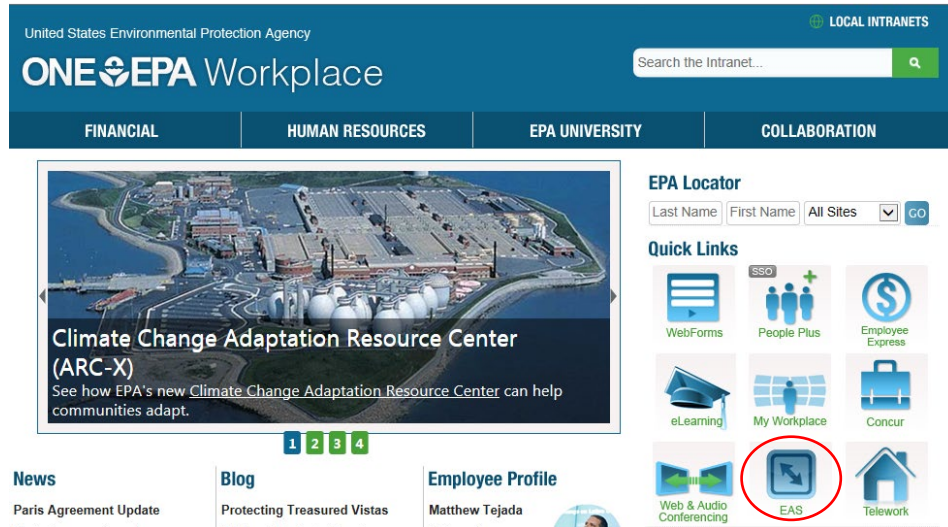
Attachments and Supporting Documents Examples

Attachments	Supporting Documents
Performance Based Work Statement(PWS) or Statement of Work (SOW)	Independent Government Cost or Price Estimate (IGCE or IGPE)
Quality Assurance Surveillance Plan	Quality Assurance Review form
Technical Evaluation Criteria	Federal Information Technology Acquisition Reform (FITARA) Approval
Reference Materials and Samples	Conference Spending Approval
Specifications and Diagrams	Contracting Officer's Representatives (OR) Nomination
	Confidential Business Information (CBI) Determination
	Market Research
	Level of Effort (LOE) Release Memo
	Brand Name Justification
	Justification for Other Than Full and Open Competition (JOFOC)

Getting Started:

How to Access EAS:

From the Agency's intranet page click on the EAS icon:



Next Click on Login to the EPA's Acquisition System EAS:







The image shows the EAS Production login interface. At the top, there is a banner with the word 'PRISM' on the left, an American flag, and a classical building. Below the banner, it says 'Powered by PRISM'. The EPA logo is on the left, and 'EAS' is in large blue letters. The login fields are 'User ID: *' and 'Password: *', both with red asterisks indicating they are required. A 'Sign In' button is below the password field. At the bottom, it says 'EAS Production' and 'Log in using your EPA LAN ID and LAN Password.'

There are a few things that you need to know:

The red asterisk * Indicates a field is required; you will not be able to move to the next page until this field is populated.

The magnifying glass icon  Indicates a field with predetermined options in order to easily populate the field.

The red diamond ♦ Indicates a field you must complete to finalize your requisition, but is not required to create your document or move to the next page i.e. you can create a document and complete this field later before it is released.



The image shows two buttons: 'Continue' and 'Cancel'. The 'Continue' button is circled in red, and there is a small right-pointing arrow icon next to it.

Clicking **Continue** saves the work and allows the Requisitioner to continue to the next page.

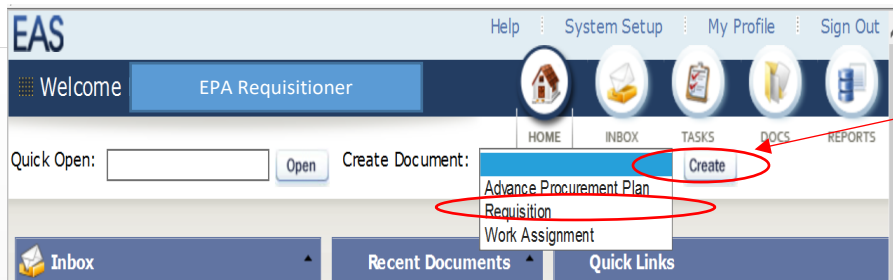
LET'S GO...

Log into EAS—using Local Area Network (LAN) User ID and Password:



The login page features a header with a PRISM logo and an American flag. Below the header, the text "Powered by PRISM" is displayed. The main heading "EAS" is prominently shown. To the left of the heading is the EPA logo. The login form includes fields for "User ID:" and "Password:", both marked with a red asterisk. A "Sign In" button is located below the password field. At the bottom, a note states "EAS Production Log in using your EPA LAN ID and LAN Password."

EAS opens to the **Welcome Page**:



The welcome page displays the "EAS" logo and navigation links: "Help", "System Setup", "My Profile", and "Sign Out". A "Welcome" message is shown next to the "EPA Requisitioner" role. Below this, there are icons for "HOME", "INBOX", "TASKS", "DOCS", and "REPORTS". A "Quick Open:" field with an "Open" button is present. A "Create Document:" dropdown menu is open, showing options: "Advance Procurement Plan", "Requisition", and "Work Assignment". The "Requisition" option is circled in red. A red arrow points from the text "Select Requisition in the dropdown and click Create" to the "Create" button, which is also circled in red.

Select Requisition in the dropdown and click **Create**

CREATE YOUR Requisition

Creating a requisition is one of the first step in the procurement planning process, and everything thereafter is built upon information provided in the advance procurement plan and requisition. It is critical that the information provided in the requisition is accurate, complete and clear in order to reduce procurement delays and to ensure the customer receives the requirement that best meets the agency's need.

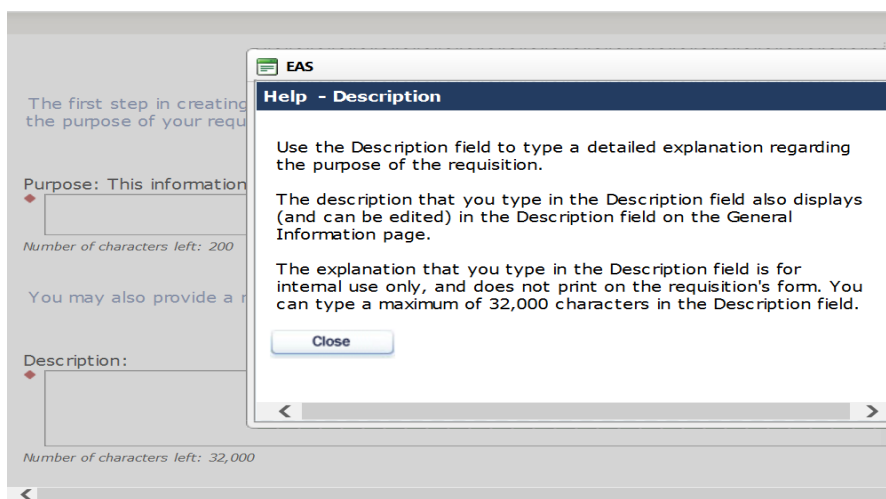
The two fields below are required in order to finalize the requisition:

Purpose: Is for internal program/regional offices to provide a short explanation regarding the purpose of the requisition. It **should not** be used for internal communications within program offices nor with OAM; internal communications should go in the Notes.

BAD Example of Purpose	GOOD Example of Purpose
PR-OW-16-00404 \$80,000	PR-OW-16-00404 \$80,000

<p>To support work on the Regulatory Determination, fluoride, and legionella</p> <p>PR-OW-16-00010 \$29,998.33</p> <p>This is an amendment to add more hours and funds to finish work. Also, to add more dashboards have been added to the original list</p>	<p>Incremental funding allocated to OGWDW TSS Contract EP-C-16-001. WAs 0-03 Reg Det. (\$20,000), WA 0-07 Fluoride (\$10,000) and WA 0-17 Legionella (\$50,000). CPOD CO Sandy Lici. No FITARA approval required.</p> <p>PR-OW-16-00010 \$29,998.33</p> <p>Incremental funding for OGWDW MNA Contract EP-C-16-015, WA 2-29, Amd 1, supports Mgt Tool Dev. Action funds WA to the Contractor's Total \$39,998.33 WP value. CPOD CO: Tammy Adams. IT Code: LMSMM0011</p>
--	--

Description: This field should be a detailed summary of the requirement, for example “this is a new requirement for...” or “this is a funding action for an existing contract, Deliver, Task Order number” or “this action is to “turn on” a Contract Line Item Number (CLIN),” etc. This field is important because this information may be sent to the Federal Procurement Data System (FPDS) database, which feeds the USASpending website. Please use descriptive and well-understood adjectives and avoid technical jargon and acronyms. Field size is large, 32,000 characters. **The Contracting Officer (CO)** is responsible for verifying the information posted in the Description field.



Description Field example:

This award is for a new Task Order under Contract EP-C-16-001. The primary objectives of this task order are to: (a) install SVE systems at the former Drilube Facility in the San Fernando Valley Superfund Sites Area 2, OU 3 (e.g., Drilube Glendale Operating Unit 3 in Glendale, CA); (b) monitor the effectiveness of the SVE system in reducing/preventing vapor intrusion in to the neighboring buildings; and (c) determine the cost effectiveness/feasibility of deploying SVE systems. A secondary objective is to initiate the examination of “how long” an SVE system has to be operated and maintained before “remedial success” is declared and the system can be deactivated and removed.

The Drilube site is a known vapor intrusion site and is divided into two (2) major parts separated by a paved alleyway. The northern unit is the former Wilson facility while the southern unit is the former Broadway facility.

The first SVE system will be installed at the Broadway facility site. If funding is available, and with EPA's approval, the second SVE system will be installed at the Wilson facility site.
USEPA Region 9 and USEPA Office of Research and Development will be working jointly together on this project.

The **PURPOSE** and **DESCRIPTION** field are critical in helping to facilitate the review and assignment of the Requisition. Submitting a complete and detailed **PURPOSE** and **DESCRIPTION** field could potentially help cut the initial review time and alleviate the need for the CO to conduct additional research to accurately identify what the Requisition is for. Additionally, identifying any EXISTING CONTRACT and TASK ORDER numbers are of the utmost importance.

The field below is required before you can move to the next page

Creation Options

Requisition Autonumber Mask: * **Select One**
OAM Requisition (PR-OAM-@#)
PTOD Requisition (PR-PTOD-@#)

By selecting Create From New, you will create a new request. If there is an existing request that you wish to copy, you can choose to Create From Existing. If there is an Advance Procurement Plan that you want to start from, select Create From APP.

select Create From APP.

Create From: * **New**
Existing Requisition
Advance Procurement Plan

Select your program/regional office
Autonumber mask

Select your action type. If this is a brand new requirement, select **new**; use caution when selecting **Existing Requisition**, since all information from the existing requisition is transferred. If you select Existing Requisition, please be sure to update all necessary fields, including the **Description** field. Also confirm whether any existing supporting documents were copied to the new requisition. Please consult EPAAG Chapter 7 for the use of the Advance Procurement Plan.

Delivery

If all of your line items will be delivered to the same location, select Single Delivery Location and enter the address information below. If more than one delivery location will be specified on the Requisition then select Multiple Delivery Locations below. You'll have the chance to enter the delivery locations with the line items later.

Delivery: * **Single Delivery Location**
Deliver To Code: * **Multiple Delivery Locations**

Delivery Date Format: Date

Delivery Date:

Continue **Cancel**

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For Delivery—select **single location** if supplies are being shipped to a single location or **multiple locations** if supplies are being shipped to more than one location. For services, this will usually be the Requisitioner office code as a **Single Delivery Location**.

Delivery

If all of your line items will be delivered to the same location, select Single Delivery Location and enter the address information below. If more than one delivery location will be specified on the Requisition then select Multiple Delivery Locations below. You'll have the chance to enter the delivery locations with the line items later.

Delivery: * ☐ Single Delivery Location

Deliver To Code: *

Update as the default Deliver To Code in My User Profile: ☐

Address: DC Warehouse
US Environmental Protection Agency
ATTN: Dexter Johnson
8335 Ardwick Ardmore Road
Hyattsville MD
20785
USA
(None)
(None)
(None)

Postal Code: 20785
Country: USA
Phone: (None)
Fax: (None)
Email: (None)
Delivery Date Format: Date
Delivery Date:

If **Single Delivery Location** is selected you can choose the **Deliver To Code** by clicking on the magnifying glass; this will give you a listing of possible **Deliver To Codes**. Once you have selected the **Deliver To Code** the **Address** will auto populate. If you select **Multiple Delivery Locations** you will have an opportunity to enter the information later in the requisition creation process.

Clicking **Continue** creates the Requisition and allows the Requisitioner to go to the next page.

BUILD YOUR REQUISITION DETAIL

The Navigator page is the first page that displays for a new Requisition

EAS Help Home Sign Out

Requisition: PR-OAM-16-00037 (BASE/In Progress)

NAVIGATOR DETAILS MESSAGES ACCESS HISTORY

ROUTE PRINT VALIDATE Other Actions

Summary

Draft DCN number:
Version: BASE

Status: In Progress
Stage: Requisition

Total Items: 0

Commitment Amount

Total: \$ 0.00
Appropriated: \$ 0.00
Non-Appropriated: \$ 0.00
Total Amount: \$ 0.00

Requisition PR-OAM-16-00037 has been successfully created.

You may begin by entering details or line items. Or, you may begin with the requisition template.

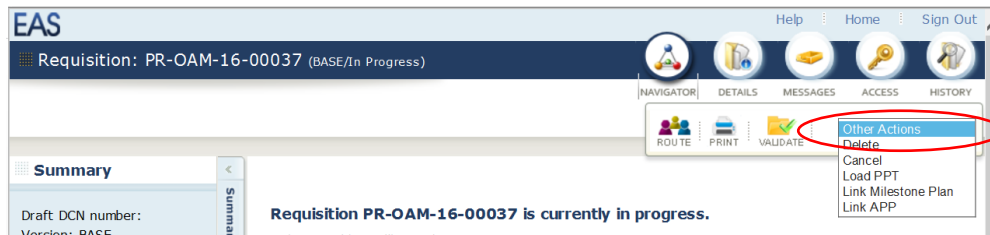
What would you like to do?

Create a new document from this requisition
Select

From the Navigator page, you can:

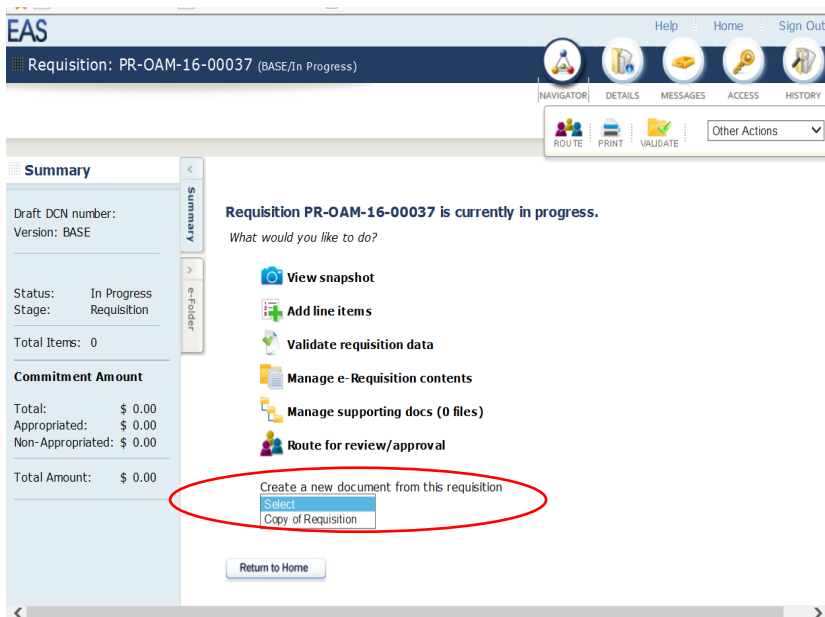
- View a snapshot of the document

- Add or edit line items
- Manage e-Requisition contents—form, attachments and supporting documents
 - View Requisition form
 - Attachments—SOW, IGCE etc.
 - Supporting Document—Brand name justifications, JOFOC etc.
- Delete Requisition
- Route Requisition for review/approval
- Print Requisition
- Validate the Requisition
- Navigate to other windows:
 - Details
 - Access
 - History



Other Actions:

- Delete: the record is removed from EAS completely
- Cancel: the record is cancelled (it still remains in EAS), but there is no further actions that can be made to the document (except to close it).
- Link APP



You can create from a Copy of a Requisition. Please use caution when creating a copy and be mindful to update the necessary fields on the copied Requisition.

Building...

The screenshot shows the EAS (Enterprise Acquisition System) interface for Requisition PR-OAM-16-00037, which is in the 'BASE/In Progress' state. The interface includes a top navigation bar with 'Help', 'Home', and 'Sign Out' links. Below this is a secondary navigation bar with 'NAVIGATOR', 'DETAILS', 'MESSAGES', 'ACCESS', and 'HISTORY' tabs. A 'ROUTE' button is also visible. The main content area is titled 'Summary' and displays the following information:

- Requisition PR-OAM-16-00037 is currently in progress.**
- What would you like to do?**
- View snapshot** (with a camera icon)
- Add line items** (with a plus icon, circled in red)
- Validate requisition data** (with a checkmark icon)
- Manage e-Requisition contents** (with a folder icon)
- Manage supporting docs (0 files)** (with a document icon)
- Route for review/approval** (with a people icon)

Below these options, there is a section for 'Create a new document from this requisition' with a 'Select' button and a 'Copy of Requisition' option. A 'Return to Home' button is located at the bottom of the main content area. On the left side, there is a 'Summary' sidebar with the following details:

- Draft DCN number:** Version: BASE
- Status:** In Progress
- Stage:** Requisition
- Total Items:** 0
- Commitment Amount:**
- Total:** \$ 0.00
- Appropriated:** \$ 0.00
- Non-Appropriated:** \$ 0.00
- Total Amount:** \$ 0.00

Click on **Add Line items**

The following fields display under the **General tab**:

EAS Help Home Sign Out

Requisition: PR-OAM-16-00037 (BASE/In Progress)

Item:0001

Item Actions
 ADD DELETE COPY HISTORY VALIDATE ITEM LIST

Summary

Draft DCN number:
Version: BASE

Status: In Progress
Stage: Requisition

Total Items: 1

Commitment Amount

Total:	\$ 0.00
Appropriated:	\$ 0.00
Non-Appropriated:	\$ 0.00
Total Amount:	\$ 0.00

General > Additional Info > Delivery > Funding > Notes

Hide Guidance ABC SPELLING

The most common information about the item is entered in this General section. Fields marked with a red asterisk are required before leaving the page. Fields marked with a red diamond are required before this Requisition can be finalized. The actions allowed at the Item level are available in the upper right corner of this section. To hide this guidance text, select Hide Guidance to the left of the Spell Check option.

Item Number: * 1

Sub Item Number:

Description:

Number of characters left: 32,000

Supplies or Services: Supplies

Picture/Specifications: Attach

Item Number : Is used to enter information about the requirement: the item number or CLIN (item number can be customized to meet the needs of the requirement);

Description: *Specific line item* information should be included here;

Picture/Specifications: Designs and/or drawing should be attached here;

Picture/Specifications: Attach

Accountable Property: ☐

Qualifier: ♦ By Quantity

Quantity: ♦

Unit of Issue: ♦

Unit Price: ♦ 0

Amount: 0

Product/Service Code:

Next Add Another Item Return to Item List

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Accountable Property: If Real or personal property will be purchased for agency's use, you would check this box.

Qualifier: Use to determine whether the line item is to be purchased by price or by quantity.

Quantity: Quantity to be acquired

Unit of Issue: Choose one from the list

Code ▲	Description
AA	Ball
AB	Bulk Pack
AC	Acre
AE	Amperes Per Meter
AM	Ampoule
AP	Aluminum Pounds Only
AS	Assortment
AY	Assembly
BA	Bale
BB	Base Box
BC	Bucket
BD	Bundle
BE	Beam
BF	Board Feet

Unit Price: Enter estimated or quoted unit price

Amount: Is auto populated if Quantity, Unit of Issue and Unit Price are entered; if not, Requisitioner can enter an Amount. An entry is required and must be made by the requisitioner when Dollars is selected.

Product/Service Code: Are used to describe products, services and research & development. The Product Service Code Manual can be found [here](#).

\$ 0.00
\$ 0.00
\$ 0.00
\$ 0.00

Description:
Software service agreement
Number of characters left: 31,974
Supplies or Services:
Picture/Specifications:
Accountable Property: ☐

Qualifier:
Amount:

Product/Service Code: IT AND TELECOM- INTEGRATED HARDWARE/SOFTWARE/SERVI

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Click **Next**—the following screen will display

General > Additional Info > Delivery > Funding > Notes

Do any of the following apply?

- This item requires special handling.
- Inspection instructions are needed for this item.
- This item has a special priority.
- This item is Is this Govt provided GFP/GFE?.
- This item is an option line item.
- Delivery is not FOB destination.
- Additional text needs to print before or after the line item on the form.
- There is an expected renewal date.
- This item has a different Period of Performance

If you Click **No**, the following Additional Info screen will display

General

Additional Info

Delivery

Funding

Notes

Special Handling:

Inspection Text:

Number of characters left: 32,000

Priority:

Is this Govt provided GFP/GFE? ☐

Option Line Item: ☐

FOB:

Destination

Period Of Performance:

08/31/2016

 to

08/31/2017

Renewal Date:

If you Click **Yes**, the following Additional Info screen will display with added required fields

General
>
Additional Info
>
Delivery
>
Funding
>
Notes

Special Handling:

Inspection Text:

Number of characters left: 32,000

Priority:

Is this Govt provided GFP/GFE?
☐

Option Line Item:
☐

FOB:

Period Of Performance:
to

Renewal Date:

Several fields below are specific to EPA for reporting purposes; it is vital that the information is complete and accurate to facilitate EPA's data integrity and quality. Please see the corresponding guidance for additional details when completing these fields:

Acquisition Office/Buyer*:	<input type="text"/>	
Need Date:	<input type="text"/>	
Brand Name*(enter either Y or N):	<input type="text"/> N	No → If Yes, Brand Name justification must be submitted, see FAR 6.302-1(1), FAR Subpart 11.105; FAR Subpart 8.405-6(b), (c) and (d); FAR Subpart 13.104; FAR Subpart 13.105; FAR Subpart 13.106; FAR Subpart 13.501; and, FAR Subpart 16.505
Multiple DCN* (Y or N):	<input type="text"/>	
Number of Requisitions for this DCN Project (enter a number 1 thru 50):	<input type="text"/>	
DCN Project ID (contact EAS helpdesk to have DCN Project ID loaded in the system):	<input type="text"/>	
Budget Override*(enter either Y or N):	<input type="text"/>	
Associated Green Procurement* (see contracts management manual Chapter 23):	<input type="text"/>	→ See screen shot below for field options
Special Funding* (enter N/A if your requirement does not involve special type of funding):	<input type="text"/>	→ See screen shot below for field options
Potential for Conflict of Interest* (See Appendix 7.3A, Attachment 7.3A-1 & CMM Chapter 9):	<input type="text"/>	→ Please reference EPAAG 9.5.1
Advisory Assistance Services* (See Chapter 7 of the Contracts Management Manual):	<input type="text"/>	→ Please reference EPAAG 37
Government Furnished Property*:	<input type="text"/>	
Ratification:	<input type="text"/>	
Recommended Procurement Method*(if 'existing contract' is selected, enter contract # in line item description):	<input type="text"/>	→ See screen shot below for field options
Alternate COR/Project Officer:	<input type="text"/>	
Total Estimated Value (IGCE)*:	<input type="text"/>	
I understand that this PR is submitted after the OCFO deadline for new commitments and may not be obligated prior to fiscal year end.	<input type="text"/>	

Associated Green Procurement* (see contracts management manual Chapter 23) Selection

Code	Description
ALTERNATIVE FUELS	Alt. Fuel Vehicles/Alt Fuels (CMM 23.1 Page 9)
BIOPREFERRED	BioPreferred (see CMM section 23.1 Page 9)
CPG	CPG (see CMM section 23.1 Page 9)
EPA GREEN MEETINGS	EPP-EPA Green Meetings and Conf. (CMM 23.1 Page 9)
EPACTENERGYSTAR/FEMP	EPACT Energy Star/FEMP (CMM section 23.1 Page 9)
EPP-EPEAT	EPP-EPEAT (see CMM section 23.1 Page 9)
N/A	Not Applicable
PRIORITY CHEMICALS	Priority Chemicals (see CMM Section 23.1 Page 9)
SNAP	SNAP (see CMM section 23.1 Page 9)
WATERSENSE	WaterSense (see CMM section 23.1 Page 9)

Page: Go Display: Total Items: 10 Page 1 of 1

Please reference EPAAG 23. Additional information can be found on [OAM's Sustainable Acquisition intranet site.](#)

Special Funding* (enter N/A if your requirement does not involve special type of funding) Selection

Code	Description
112(R) CLEAN AIR ACT	112(r) Clean Air Act
ARRA	American Recovery and Reinvestment Act Funds
CEPPO	CEPPO
CERCLA PIPELINE	CERCLA Pipeline
CID FUNDS	CID Funds
DHS	Homeland Security Funds from an IAA
ENFORCEMENT FUNDS	Enforcement Funds
FEMA	FEMA
GLNPO	Great Lakes National Program Office
HURRICANE KATRINA	Hurricane Katrina
HURRICANE RITA	Hurricane Rita
IRIS	IRIS
LCEF	Lab Capital Equipment Funds
N/A	Not Applicable
OPA	OPA
OPA NON - SITE	OPA Non - Site
REMEDIAL ACTION	Remedial Action
REMOVAL	Removal
REMOVAL - OTHER	Removal - Other Response
REMOVAL DEOBS	Removal DeObs

On occasion EPA will receive designated funding, as such the EPA is required to track the funding and report it via FPDS-NG and USASpending website.

Recommended Procurement Method*(if 'existing contract' is selected, enter contract # in line i

Code	Description
COMPETITIVE	Competitive
EXISTING CONTRACT	Existing Contract
JOFOC	JOFOC -see FAR part 6 please provide justification
LIMITED SOURCE	Limited Source - FAR part 8, provide justification
SOLE SOURCE	Sole Source -see FAR part13, provide justification
UNKNOWN	Unknown

COs shall provide for full and open competition through use of the **Competitive** procedures; however, for some procurements **Competitive** is not appropriate, please see the FAR references, which outlines use of "Other than full and open competition," and the Justifications required to complete an action using "Other than full and open competition." If a buyer select a code other than **Competitive**, please include the necessary Justifications, failure to do so will result in a delay of the procurement.

Note ♦these fields are required before you can finalize the Requisition. If you skip any you will get a validation error message!

Click **Next** to enter **Delivery Location** information, if necessary.

Click **Funding** to enter Accounting Information

General > Additional Info > Delivery > **Funding** > Notes

Funding ID - 1


☒ Single Funding

☐ Multiple Funding

☐ No Funding

Total Quantity: 0

Total Amount: \$0.00

Accounting Code: (None) 

Percent: 100

Quantity: 0

Notes to Buyer

The requisitioner can provide notes to buyers, in this instance the buyer is the Contracting Officer, which allows the Requisitioner to communicate important information about the procurement to the buyer. For example, questions, comments, or “other” information that is not captured in a supporting document or other fields in the Requisition. The requisitioner can include **Notes** in two places within EAS, from the “General tab” section or the “Line Item detail,” for specific information pertaining to a line item.

The screenshot displays the EAS system interface with two views of the 'Notes to Buyer' functionality. Red arrows indicate the navigation paths from the top navigation bar to the respective 'Notes' sections.

Top Navigation Bar: Items > Delivery > Funding > Additional Info > e-Requisition > Notes

Table:

	Item Number	Description	Quantity	Unit	Total Amount	Committed Amount	Option LI
<input type="checkbox"/>	0001				\$0.00	\$0.00	No

General Tab View:

General > Additional Info > Funding > Notes

Notes

This is an area for any Notes specific to this line item. The

Notes:

asdfkg asdfgkh asdg'k

Number of characters left: 31,979

Line Item Detail View:

Items > Delivery > Funding > Additional Info > e-Requisition > Notes

Notes

This is an area for any general Notes about the requisition. There is a separate Notes to Buyer concerns the Buyer. These Notes do not print and they do not carry forward to any subsequent

Notes:

Items > Delivery > Funding > Additional Info > e-Requisition > Notes

Notes

This is an area for any general information that concerns this requisition.

Notes:

Number of characters left: 32,000

Notes to Buyer:

Number of characters left: 32,000

EAS

Help - Notes to Buyer

Use the Notes to Buyer field to include information about the requisition that you want to send to the buyer. The text does not print on the form, but a notification is sent to the buyer's Inbox.

In the Notes to Buyer field, type the information you want to send to the buyer.

You can type a maximum of 32,000 characters in the Notes to Buyer field.

Close

Click **Add another Item** to add another **Item number**, continue steps to create all necessary **Line Items** for the procurement

Qualifier: By Quantity

Quantity: 50

Unit of Issue: EA Each

Unit Price: 150.00

Amount: 7,500.00

Product/Service Code: 7042 MINI AND MICRO COMPUTER CONTROL DEVICES

Next Add Another Item Return to Item List

Or Click **Return to Item List** to return to Items—this will display all Items entered

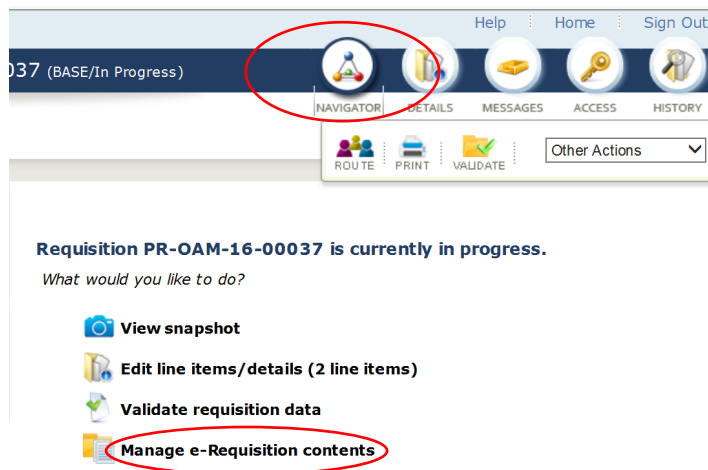
Items > Delivery > Funding > Additional Info > e-Requisition > Notes

Add Copy Edit View Delete Other Actions

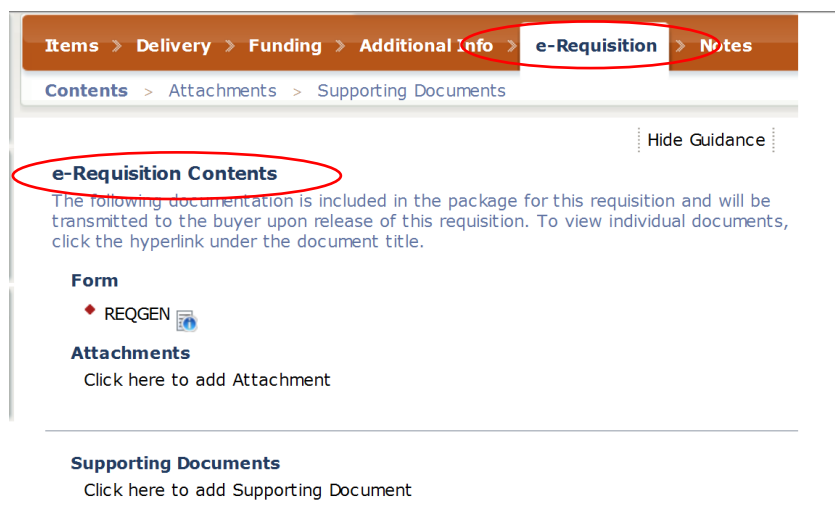
	Item Number	Description	Quantity	Unit	Total Amount	Committed Amount	Option LI	Status	Last Update Version	Action	Delete
<input checked="" type="checkbox"/>	0001	Software service agreement			\$2,500.00	\$2,500.00	No	Item Active	BASE	Add	×
<input type="checkbox"/>	0002	50 ea Computer Widgets	50	EA	\$7,500.00	\$7,500.00	No	Item Active	BASE	Add	×

Next Return to Home

Manage e-Requisition Contents



You can navigate to **Manage e-Requisition contents** from the opening requisition screen. Not all requisitions require attachments and/or supporting documents. However, if the requisition is for a new requirement or the requirement requires specifications, tasks and/or terms/conditions, then most likely at a minimum a Statement of Work (SOW) and Independent Government Estimate (IGE) (IGE was formerly referred to as IGCE, please see the Knowledge Management toolkit for additional information on [IGE](#)) will be required. It is critical that your Requisition include the appropriate documents at the time of submission in order to pass through OAM's Quality Control Review process. Requisitions without the proper documentation will be delayed in being forwarded to the operational contracting office until all the required documents are provided. If you need additional assistance to determine if attachments and/or supporting documents are required, please contact your Contracting Office. The Office of Acquisition Management (OAM) is in the process of developing standard checklists that will identify the needed documents depending on the type of procurement. The checklists will serve as guides and are not meant to be "all inclusive."

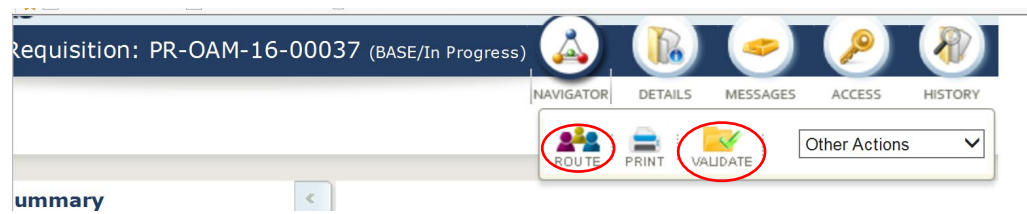


Attachments: are documents that **provide important information to the vendor or contractor** about the product or service required by the EPA. They will be released outside the Agency (public).

Supporting documents: are **internal to EPA's acquisition process** and are not appropriate to be released outside the Agency. Please pay special attention when attaching **Attachments and Supporting documents**.

The Requisition is almost complete:

First, the Requisitioner must **Validate** the information provided and resolve any error or warnings. Next, **Route** the Requisition to the appropriate Acquisition Office.



Validate: ensure the requisition is complete and accurate. Validate may give two types of messages:

- **Errors** must be fixed before the requisition is released and routed for further action.
- **Warning** are informative reminders that information may be missing; however, you can release and route a requisition with warnings.

Route: Requisitioner should consult with their Program/Regional Office, who may have specific Routing protocols that need to be followed. Examples of routes include supervisors, funds control officers, and internet security officers.

Requisition for a Delivery/Task Order or Work Assignment: the Contracting Officer Representative (TOCOR)/ Work Assignment Contracting Officer Representative (WACOR) should always route the Requisition to the Contract level (CLCOR) to prevent unintended significant contract management issues:

- Unintended obligation of funds uses contract capacity (hours) reserved for other projects
- Increases the potential of funds being obligated with no immediate intended use "parking".
- Potential negative impact on utilization and burn rate.
- Increases the chance that funds are obligated to an unintended vehicle.

Granting Access

Click Access then User Access

Select Users; provide User the appropriate level of Access—Full Access or Read Only

Full Access: gives the user the ability to edit the requisition

Read Only: gives the user the ability to view the requisition only

EAS Help Home Sign Out

Requisition: PR-CPOD-15-00132 (BASE/In Progress)

NAVIGATOR DETAILS MESSAGES ACCESS HISTORY

ROUTE APPROVE PRINT VALIDATE Other Actions

Summary

Draft DCN number:
Version: BASE

Status: In Progress
Stage: Requisition

Total Items: 2

Site Access | User Access | User Group Access

Add

User ID	User Formal Name	Privilege	Delete
ALOWER02	Lower, Angela	Full Access	X

A Requisitioner assigns the requisition to an **Acquisition Office/Buyer** in EAS by either clicking **DETAILS** then **Additional information** to find the field or clicking **Edit Line Item Details** from the home screen and selecting **Additional Info**

7 (BASE/In Progress) Help Home Sign Out

NAVIGATOR DETAILS MESSAGES ACCESS HISTORY

ROUTE PRINT VALIDATE Other Actions

Items > Delivery > Funding > Additional Info > e-Requisition > Notes

Add Copy Edit View Delete Other Actions

Item Number	Description	Quantity	Unit	Total Amount	Committed Amount
0001	Software service agreement			\$2,500.00	\$2,500.00
0002	50 ea Computer Widgets	50	EA	\$7,500.00	\$7,500.00

Acquisition Office/Buyer*: CPD/SPEC/ORD-OW-0 Specialized Service Center - ORD, OW & OSWER Team

Need Date: 04/01/2015

Select the contracting office, branch, and/or team that will be processing this action. Please note that OAM has implemented a Requisition Quality Control Review (QCR) team. The QCR team lead will receive all Requisitions regardless of to whom the action will eventually be assigned. The requisitioner and technical point of contact, among others, will receive a series of emails advising of where the requisition is within the review process. After completing the review process [insert link here and add hypertext "click here for more information on the QCR"], the requisition will be reassigned to the selected operational contracting office. An operational manager will confirm receipt and provide a projected award date or time frame.

PALT GUIDE

This guide is based on 'EPAAG 7.1 Attachment A, Procurement Acquisition Lead Time (PALT) Standards, January 12, 2016'. The purpose of this guide is to provide insight to the Requisitioner into Execution PALT for a range of different procurement action for procurement planning and requisition submission.

Micropurchase threshold \$3,500

Simplified Acquisition (SAP) threshold \$150,000

Procurement Type	Dollar Value	Execution PALT
Simplified Acquisition Procedures	Micropurchase	Up to 15 days
	Above Micro & Under SAP	Up to 45 days
	Above SAT - \$6.5M (<i>Commercial Test Procedures</i>)	Up to 110 days
Federal Supply Schedule(FSS)/GSA Order Including Blanket Purchase Agreement (BPA) Orders (no SOW)	Micropurchase	Up to 30 days
	Above Micro & Under SAT	Up to 45 days
	Above SAT	Up to 90 days
FSS/GSA Order Including PA Orders (W/SOW)	Micropurchase	Up to 30 days
	Above Micro & Under SAT	Up to 60 days
	Above SAT	Up to 90 days
Sealed Bids Including 2 Step	Up to \$1M	Up to 90 days
	Above \$1M up to \$10M	Up to 150 days
	Over \$10M	Up to 180 days
Competitive Proposals (RFP)	Up to \$1M	Up to 120 days
	Above \$1M up to \$10M	Up to 150 days
	Over \$10M	Up to 210 days
Noncompetitive Actions - Includes sole source, 8a, NISH, etc.	Up to \$1M	Up to 120 days
	Above \$1M up to \$10M	Up to 150 days
	Over \$10M	Up to 180 days
BPA Orders FAR 13	Any Amount	Up to 30 days
Deliver Order (EPA)	Any Amount	Up to 30 days
Task Order (EPA)	Any Amount	Up to 75 days
Work Assignment	Any Amount	Up to 60 days
Administrative Mod / Funding Mod	Any Amount	Up to 15 days

Procurement Type	Dollar Value	Execution PALT
Unilateral Mod (Option Terms, Option Quantities, Award Terms)	Any Amount	Up to 60 days
Change Order / Definitizations	Up to \$1M	Up to 60 days
	Above \$1M up to \$10M	Up to 80 days
	Over \$10M	Up to 120 days
Bilateral Mod	Up to \$1M	Up to 60 days
	Above \$1M up to \$10M	Up to 80 days
	Over \$10M	Up to 120 days

Additional Resources

The PRISM 7.2 Users Guide: <http://easinfo.epa.gov/resourcecenter/prism-72-requisitions-user-guide>

<http://easinfo.epa.gov/?q=eas-resource-center>

- Computer Based Training
- Desk Guides
- FAQs
- Functionality Guides
- Hot Tips
- Others

EAS Resource Center				
Showing 1 - 25 of 241 entries				
Title	Resource Material Type	Audience	EAS Topic	Date Published
New Milestone Step – Resolving PR Issues	Hot Tip	Contracting Officer / Contract Specialist	Milestone Plans, Requisition	07/20/2016
EAS Change Control Board Voting Members	Frequently Asked Questions	EAS Support Team	General Information	07/07/2016
Release without Validations - Questions from the EAS Help Desk	Frequently Asked Questions	Contracting Officer / Contract Specialist, EAS Support Team	Financial, General Information	06/22/2016
Adding a Vendor into EAS - Questions from the EAS Help Desk	Frequently Asked Questions	Contracting Officer / Contract Specialist, EAS Support Team	General Information	06/22/2016
Buyer Workload Changes	Hot Tip	Contracting Officer / Contract Specialist	Requisition	06/13/2016
Sharing Document	Desk Guide	Contracting Officer / Contract	General Information	06/07/2016

Search content
Contains

Filter by
Audience
Resource Material Type
EAS Version
EAS Topic
None

Show entries
25
Clear Filter

Subsection 7.1.2 –Consolidation and Bundling (December 2018)

7.1.2.1 Purpose.

The purpose of this subsection is to prescribe agency policies implementing FAR 7.107, *Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling*.

7.1.2.2 Background.

It is the goal of the Government to eliminate unnecessary contract consolidation and bundling. To meet that goal, FAR 7.107 requires written determinations that justify the necessity of consolidating or bundling requirements. This subsection provides guidance in implementing this requirement.

7.1.2.3 Authority/Applicability.

(a) Authority.

This subsection is issued under the authorities of FAR 1.301(a), and EPA Delegations Manual Chapter 1-2.

(b) Applicability.

Acquisitions that have been reserved or set-aside exclusively for small businesses are exempted from this subsection, as are task/delivery orders issued against existing EPA contracts because the consolidation or bundling review will be performed at the contract level.

This subsection applies to all acquisitions involving consolidation, bundling or substantial bundling including contracts or task/delivery orders awarded for EPA by other agencies (assisted acquisitions) and task/delivery orders awarded by use of another agency's vehicle such as Federal Supply Schedule (FSS) contracts, government-wide acquisition contracts (GWAC), or multi-agency contracts (direct acquisitions).

7.1.2.4 Definitions.

Definitions of "Consolidation" and "Bundling" are located in FAR 2.101, *Definitions*. The following are abbreviated definitions provided for convenience. Contracting officers must read the full definitions provided in the FAR before taking any action.

Consolidation – The agency prepares a solicitation consolidating two or more requirements that have been previously acquired under two or more separate contracts (performed by either small or large business concerns). The solicitation will result in a single contract, multiple-award contract, or task or delivery order. Each of the earlier separate contracts was lower in cost than the total cost of the contract or order to be awarded under the solicitation. For construction,

consolidation occurs when a solicitation includes construction projects at two or more discrete sites.

Bundling – The agency consolidates two or more requirements for supplies or services, previously acquired under separate smaller contracts performed by small business concerns, into a solicitation for a single contract, multiple-award contract, or task or delivery order; and the resulting contract is likely to be unsuitable for award to a small business concern.

Substantial Bundling – Any bundling whose estimated contract or order value is \$2.5M or more. In addition to the bundling documentation requirements, substantial bundling requires additional documentation as described in FAR 7.107-4(a).

7.1.2.5 Policy.

During the acquisition strategy process, program offices are responsible for notifying the contracting officer immediately after considering the consolidation or bundling of requirements. The contracting officer, in conjunction with the program office, will determine whether the requirement meets the definition of consolidation or bundling. If the requirement is an assisted acquisition, the program office will notify the Office of Small and Disadvantaged Business Utilization (OSDBU) directly instead of the contracting officer.

As early in the acquisition planning period as possible, the program office and contracting officer will ensure that the Small Business Specialist (SBS) and the Office of Small and Disadvantaged Business Utilization (OSDBU) are notified of the consolidation or bundling requirement.

Please note that the SBS responsibility for reviewing consolidation or bundling determinations is performed by the Agency Advocate for Competition.

In accordance with EPAAG 7.1.1.5.3(II), consolidation or bundling requirements must be discussed in the Three-Year Acquisition Plan.

In accordance with FAR 7.105(b)(1)(iv), consolidation or bundling requirements must be addressed in Advance Acquisition Plans.

7.1.2.5.1 Consolidation

FAR 7.107-2 requires a written determination justifying the necessity of conducting an acquisition that is a consolidation of requirements.

The development of the determination will be the joint responsibility of the program office and contracting officer. While the contracting officer will have the primary responsibility of preparing the determination, the program office will provide much of the critical rationale and support.

All consolidation determinations above the simplified acquisition threshold will be reviewed by the OSDBU as part of the documentation sent with EPA Form 1900-37, *Record of Procurement Request Review*. The Small Business Specialist is the approving official.

If the estimated total dollar value exceeds \$2 million, the senior procurement executive (SPE) shall be the approving official. The threshold applies to the cumulative maximum potential value of the contract (including options).

When the conditions of FAR 7.107-2(e)(1) apply, the OSDBU, SBS and SPE shall review and concur on the determination before it is submitted to the Deputy Secretary for approval.

7.1.2.5.2 Bundling

FAR 7.107-3 requires a written determination justifying the necessity of conducting an acquisition that involves the bundling of requirements.

The development of the determination will be the joint responsibility of the program office and contracting officer. While the contracting officer will have the primary responsibility of preparing the determination, the program office will provide much of the critical rationale and support.

All bundling determinations above the simplified acquisition threshold will be reviewed by the OSDBU as part of the documentation sent with EPA Form 1900-37, *Record of Procurement Request Review*. The Small Business Specialist is the approving official.

If the estimated total dollar value meets the substantial bundling threshold of \$2.5 million or more, the senior procurement executive (SPE) shall be the approving official. The threshold applies to the cumulative maximum potential value of the contract (including options).

When the conditions of FAR 7.107-3(f)(1) apply, the OSDBU, SBS and SPE shall review and concur on the determination before it is submitted to the Deputy Secretary for approval.

7.1.2.5.3 Assisted Acquisitions

Since assisted acquisitions are not subject to the EPA Form 1900-37 review process, program offices are responsible for notifying the OSDBU immediately after considering the consolidation or bundling of requirements.

The OSDBU will work directly with the program office in developing the consolidation determination required under FAR 7.107-2 or the bundling determination required under FAR 7.107-3.

The OSDBU is the approving official for assisted acquisition consolidation or bundling determinations.

Subsection 7.1.3 – Independent Government Estimates (November 2018)

7.1.3.1 Purpose.

The purpose of this subsection is to establish policies for the use of Independent Government Estimates in EPA acquisitions. This subsection also distinguishes between the different types of estimates and the levels of documentation that are required for different acquisitions.

7.1.3.2 Background.

Various acquisition regulations and Agency rules require the government to document its estimate of the projected cost or price of the supplies or services being acquired in most circumstances. The level of detail and documentation required for different types of estimates vary greatly depending on certain factors such as, what is being acquired, the anticipated total dollar amount, the anticipated contract type, the acquisition procedures being used, and other factors.

The terminology used to describe estimates required for federal acquisitions has not been used consistently at EPA or throughout the Federal Government. Commonly, the term “Independent Government Cost Estimate (IGCE)” has been used to describe every type of estimate of cost or price regardless of the circumstances of the acquisition. Historically and by its connotation, an IGCE involves a detailed estimate of individual cost elements for an acquisition and is appropriate, for example, when planning a negotiated cost reimbursement contract for complex services. However, that level of detail is typically not required when using simplified or streamlined acquisition procedures or when acquiring less complex supplies and services. Therefore, new terminology and guidance is needed to clarify what type of estimates are needed and what level of documentation should be included for various contract actions.

This subsection categorizes all government estimates of cost or price as Independent Government Estimates (IGEs) and clarifies the terminology and documentation requirements for IGEs based on existing regulations and rules, other important sources, and best practices.

7.1.3.3 Authority/Applicability.

(a) The authorities for this subsection are listed below:

- (1) FAR 7.103 - Agency-Head Responsibilities
- (2) FAR 13.106-3 - Award and Documentation
- (3) FAR 14.408-2 - Responsible Bidder—Reasonableness of Price
- (4) FAR 15.404 - Contract Pricing
- (5) FAR 36.203 - Government Estimate of Construction Costs
- (6) FAR 36.605 - Government Cost Estimate for Architect-Engineer Work

(b) This subsection applies to all contract actions, except incremental funding, greater than the micropurchase threshold. For purposes of this subsection, contract actions include contracts, purchase orders, task orders, delivery orders, modifications to contracts and orders.

7.1.3.4 Definitions.

(a) The following definitions apply to this subsection:

Independent Government Estimate (IGE) - the government's estimate of the projected cost or price of the resources a contractor will incur in the performance of a contract. An IGE can be one of two types: an Independent Government Cost Estimate (IGCE) or an Independent Government Price Estimate (IGPE).

Independent Government Cost Estimate (IGCE) - a detailed estimate that requires a breakdown of costs anticipated in performance of the contract. These costs include 1) direct costs such as labor, products, equipment, travel, transportation and other direct costs; 2) indirect costs such as labor overhead, material overhead, fringe benefits, and general and administrative (G&A) expenses; and 3) profit or fee (amount above costs incurred to remunerate the contractor for the risks involved in undertaking the contract).

Independent Government Price Estimate (IGPE) - a basic estimate of the anticipated price for products, equipment, and simple services that are routinely available on the open market at competitive prices. The price estimate must be independently developed based on a comparison and analysis of factors such as published catalog prices, historical prices paid, market survey information, and contractor price quotes.

(b) The following acronyms apply to this subsection:

APP - Advanced Procurement Plan
 BPA - Blanket Purchase Agreement
 CO - Contracting Officer
 COR - Contracting Officer's Representative
 FAR - Federal Acquisition Regulation
 FFP - Firm-Fixed-Price
 G&A - General and Administrative Expenses
 IDIQ - Indefinite-Delivery Indefinite-Quantity
 IGE - Independent Government Estimate
 IGCE - Independent Government Cost Estimate
 IGPE - Independent Government Price Estimate
 LH - Labor-Hour
 MPT - Micropurchase Threshold
 SAT - Simplified Acquisition Threshold
 T&M - Time-and-Materials

7.1.3.5 Policy.

(a) An IGE is required for all contract actions, except for incremental funding, greater than the micropurchase threshold. The IGE for the contract action will be either an *Independent Government Cost Estimate (IGCE)* or an *Independent Government Price Estimate (IGPE)* as described in 7.1.3.4 above.

(b) The requiring official, either the project officer or the Contracting Officer's Representative (COR), is the estimator responsible for preparing the IGE. Estimators shall ensure that they comply with this subsection as well as any program office requirements and thresholds for preparing IGEs. The Contracting Officer (CO) shall review the IGE to ensure it is accurate, complete, and appropriate for the size and complexity of the acquisition. The CO may require additional detail or information from the estimator beyond the documentation guidelines described in 7.3.1.6 below based on the specifics of the acquisition.

(c) The IGE shall be included and approved with the Advanced Procurement Plan (APP) if an APP is required in accordance with EPAAG 7.1.1. If an APP is not required, the IGE shall be included with the requisition. The CO must approve the IGE prior to solicitation.

(d) An IGE is considered Source Selection Information and must be safeguarded in accordance with [FAR 3.104](#) and [5.401\(a\)](#). Additional safeguards for IGEs are specified for the acquisition of construction contracts ([FAR 36.203\(c\)](#)) and architect-engineer contracts ([FAR 36.605\(b\)](#)). Although IGEs must be safeguarded as described above, there are limited instances in which IGE information may be released outside the agency, such as to the Comptroller General in response to a protest. COs should seek input from the Office of General Counsel before releasing an IGE or any Source Selection Information.

7.1.3.6 Documentation

(a) The documentation requirements for an IGE vary greatly based on the specifics of the acquisition. For example, an IGE for a \$5,000 supply purchase from an EPA strategic sourcing vehicle with fixed unit prices might be satisfied by inputting a total price estimate in the appropriate fields of the requisition. Whereas, an IGE for the acquisition of complex, noncommercial services for a major EPA program should be developed as a detailed IGCE with a thorough description of all anticipated cost elements. The estimator should work with the CO to determine the appropriate type and level of detail necessary to properly document the IGE for each contract action.

(b) The following general guidelines are provided as recommendations for documenting IGEs in common situations:

Acquisition Procedures	IGE Required?	IGE Type	Documentation
Any < MPT	No	None	None unless the buyer considers necessary.
Supplies against EPA IDIQs, BPAs, and Strategic Sourcing Vehicles	Yes	IGPE	State the total estimate on the requisition based on the established IDIQ/BPA prices.
Supplies < SAT but > MPT	Yes	IGPE	State the total estimate on the requisition and include evidence of market research to support the estimate; <u>or</u> Prepare a simplified written IGPE that estimates the price for each line item of supply and in total.
Supplies > SAT (commercial)	Yes	IGPE	Prepare a simplified written IGPE that estimates the price for each line item of supply and in total. Include cost detail as necessary.

Services < SAT (FFP) but > MPT	Yes	IGPE	Prepare a simplified written IGPE that estimates the price for each PWS/SOW task and in total.
Supplies > SAT (noncommercial)	Yes	IGCE	Prepare a written IGCE that estimates the price for each line item of supply and in total. Include direct and indirect cost detail for each item of supply and for major components.
Services < SAT (T&M / LH) but > MPT Services > SAT (FFP) Services against EPA IDIQs/BPAs (FFP / T&M / LH)	Yes	IGCE	Prepare a written IGCE that estimates direct costs, indirect costs, and price for each PWS/SOW task and in total (based on established contract prices/rates if applicable). Include a narrative description of all assumptions and conditions.
Services < SAT (cost reimbursement) but > MPT Services against EPA IDIQs/BPAs (cost reimbursement)	Yes	IGCE	Prepare a written IGCE that estimates direct costs, indirect costs, fee, and total estimated cost for each PWS/SOW task and in total (based on established contract rates if applicable). Include a narrative description of all assumptions and conditions.
Services > SAT (cost reimbursement) Services > SAT (T&M / LH) Services > SAT (IDIQ or BPA)	Yes	IGCE	Prepare a detailed written IGCE that estimates direct costs, indirect costs, fee, and total estimated cost/price for each PWS/SOW task and in total. Describe the team that developed the estimate, the estimating method(s) used, and supporting data/documentation. Include all calculations in the estimate. Include a detailed narrative description of all assumptions and conditions.

(c) For more information on development, methodologies, and documentation of IGEs, see *EPA's Guide for Preparing Independent Government Estimates* included in EPAAG Appendix 7.1.3-A.

ENVIRONMENTAL PROTECTION AGENCY

EPAAG Appendix 7.1.3-A

EPA Guide for Preparing Independent Government Estimates

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ACRONYMS

APP	Advanced Procurement Plan
BPA's	Blanket Purchase Agreements
CAP	Contractor Acquired Property
CO	Contracting Officer
COR	Contracting Officer's Representative
COTS	Commercial-off-the-Shelf
CPI	Consumer Price Index
CR	Cost Reimbursement
DBA	Davis-Bacon Act
DO	Delivery Order
DO COR	Delivery Order Contracting Officer's Representative
DOL	Department of Labor
EAS	EPA Acquisition System
EPA	Environmental Protection Agency
EPAAG	EPA Acquisition Guide
EPAAR	EPA Acquisition Regulation
FAOSC	Financial Analysis and Oversight Service Center
FAR	Federal Acquisition Regulation
FFP	Firm-Fixed-Price
G&A	General and Administrative
GFP	Government Furnished Property
GSA	General Services Administration
IDIQ	Indefinite-Delivery Indefinite-Quantity
IGCE	Independent Government Cost Estimate
IGE	Independent Government Estimate
IGPE	Independent Government Price Estimate
IMO	Information Management Officer
IT	Information Technology
KMS	Knowledge Management Site
LH	Labor Hour
LOE	Level of Effort
MPT	Micro-purchase Threshold
OAM	Office of Acquisition Management
ODC	Other Direct Cost
OEI	Office of Environmental Information
P&T	Professional and Technical Levels
PC	Personal Computer
PO	Project Officer
PWS	Performance Work Statement
RPM	Remedial Project Manager
SAT	Simplified Acquisition Threshold
SCA	Service Contract Act
SOW	Statement of Work

T&M	Time and Materials
TO	Task Order
TO COR	Task Order Contracting Officer's Representative
WBS	Work Breakdown Structure

ABSTRACT

This document provides current guidance to EPA CORs and Program Offices on how to prepare Independent Government Estimates (IGEs). It provides background information, key definitions and concepts, policy sources and citations, and practical guidance for developing and documenting an IGE. The intent of this guide is not to dictate a universal set of estimating tools for use in every situation. Rather, the intent is to contain overarching guidance on various pricing, managerial accounting, cost estimating, and budgeting techniques, which may be used depending upon the specific technical or programmatic situation. Users may apply these techniques to new and existing contracts. It is expected that each EPA Program Office will conduct a review and develop, and/or update IGE guidance in accordance with this guide.

CHAPTER 1 INTRODUCTION

This chapter introduces Independent Government Estimates (IGEs), and outlines the purpose, scope, and organization of this document.

1.1. Independent Government Estimates (IGEs)

The Federal Government and private sectors use independent cost or price estimates as an integral tool in their acquisition programs. Based on the requirements, this estimate is an organization's best projection of the cost or price for an item or service.

In the past, the terminology used to describe estimates required for federal acquisitions has not been used consistently at EPA or throughout the Federal Government. For example, at EPA the term "Independent Government Cost Estimate (IGCE)" was commonly used to describe every type of estimate of cost or price regardless of the circumstances of the acquisition. However, historically and by its definition, an IGCE is a detailed estimate of individual cost elements for an acquisition and is appropriate, for example, when planning a negotiated cost reimbursement contract for complex services. That level of detail is typically not required when using simplified or streamlined acquisition procedures or when acquiring less complex supplies and services. Rather, the level of detail and documentation required for different types of estimates varies greatly depending on certain factors such as, what is being acquired, the anticipated total dollar amount, the anticipated contract type, the acquisition procedures being used, and other factors.

At EPA, all government estimates of cost or price are now referred to as *Independent Government Estimates (IGEs)*. Depending on the contract action, the IGE will be either an *Independent Government Cost Estimate (IGCE)* when a detailed estimate of cost elements is required, or an *Independent Government Price Estimate (IGPE)* when only the unit price and/or total price estimate is needed. IGEs are required for all contract actions, except incremental funding, greater than the micro-purchase threshold. Refer to FAR 2.101 for the current micro-purchase threshold. For purposes of this guide, contract actions include contracts, purchase orders, task orders, delivery orders, modifications to contracts and orders.

1.2. Purpose

The purpose of this guide is to provide general guidance to EPA personnel in the preparation of IGEs for new and existing contract requirements. This guide does not contain required agency procedures or contract specific guidance, but rather describes methods and techniques for preparing IGEs which could be helpful. It is expected that each EPA Program Office will supplement this guide with information relative to the specific program's requirements.

Estimator:

As referred to in this guide, the estimator is the requiring official that prepares the IGE. At EPA, this person is commonly referred to as the Project Officer (PO) or Contracting Officer's Representative (COR). Refer to "Roles and Responsibilities" under Section 2.5 for more details.

The time and effort expended and the details included in the IGE will vary with the size and complexity of the acquisition. Each program is different. Some items discussed in detail in this text may not pertain to all programs. This guide must be adapted for the specific needs of each program. Program Offices know more about their contractual needs than anyone else, and program staff are the most qualified to estimate the value of the work required. EPA has no standardized forms or formats for IGEs. Some Program Offices may already have existing IGE forms; however, if forms do not exist, the estimator may create IGE forms or choose to use the samples provided in the OAM Knowledge Management Site. Generally, the more details included in an IGE, the more useful the tool.

1.3. Scope

Chapters 1 through 5 of this guide consolidate and update EPA's existing practices and guidance for developing an IGE. Specifically, this guide identifies the steps for developing an IGE, provides examples, and references useful IGE resources.

This document, as issued by EPA, updates the "Independent Government Estimates – A Student Text Reference and Workshop, Prepared by the Office of Acquisition Management, September 1998 and revised in June 2010".

1.4. Organization

This guide is organized as follows:

- Chapter 1 introduces the document, including its purpose, scope, and organization.
- Chapter 2 provides background information on IGEs, including defining critical terms, highlighting applicable authority, establishing the overall purpose, identifying important roles and responsibilities, and discussing safeguarding.
- Chapter 3 describes the IGPE, including a definition, when to use IGPEs, methods for price estimating, and basic guidance on how to document an IGPE.
- Chapter 4 describes the IGCE, including a definition, when to use IGCEs, methods for cost estimating, and basic guidance on how to document an IGCE.
- Chapter 5 provides more detailed guidance on preparing IGCEs, including steps to follow, identifying cost types, how to estimate those cost elements, as well as documenting and validating the cost estimate.
- Chapter 6 provides guidance on continuous updates to IGEs.
- Sample IGEs are available as part of the *Independent Government Estimates Toolkit* on the OAM Knowledge Management Site (KMS) at: <https://usepa.sharepoint.com/sites/OARMCommunity/oam.kms>

Throughout the guide, pop-up boxes, exhibits and tables are provided to help illustrate the concepts discussed.

CHAPTER 2 BACKGROUND

This chapter provides background information pertaining to IGEs, including policy, definitions, purpose, and roles and responsibilities.

2.1. Policy

The requirements for IGEs are found in EPA Acquisition Guide (EPAAG) 7.1.3 - *Independent Government Estimates*. The policy requires the development of an IGE for all contract actions, except incremental funding, greater than the micro-purchase threshold (MPT). For purposes of this guide, contract actions include contracts, purchase orders, task orders, delivery orders, modifications to contracts and orders.

EPAAG 7.1.3.5 states:

- An IGE is required above the MPT
- The COR or PO is the estimator
- The CO reviews and approves the IGE
- IGEs are submitted with the APP, or the requisition when an APP is not required
- IGEs must be safeguarded (FAR 5.401(a) and FAR 36.05(b))

In addition to the EPAAG, the FAR considers IGE's an integral part of the acquisition process. Although the FAR does not define these various types of estimates, specific references to IGEs in the FAR can be found at:

- FAR 4.803 states that documentation to be contained in the contract file should include the *Government estimate of contract price*.
- FAR 7.103 states that agencies are responsible for ensuring that the statement of work for each acquisition is closely aligned with performance outcomes and *cost estimates*.
- FAR 13.106-3 states COs may determine price reasonableness based upon comparison to an *independent Government estimate*.
- FAR 14.408-2 states that the contracting officer shall determine that a prospective contractor is responsible and that the prices offered are reasonable before awarding the contract. In addition, FAR 14.408-2 states that the price analysis techniques in FAR 15.404-1 may be used for determining price reasonableness in sealed bidding.
- FAR 15.404-1(b)(2)(v) states price reasonableness may be determined in part through comparison with an *independent Government cost estimate*.
- FAR 36.203 and 36.605 require preparation of *independent Government estimates of cost* in order to determine fair and reasonable pricing in construction and architect-engineering contracts.

2.2. Definitions

EPAAG 7.1.3 provides the following definitions:

Independent Government Estimate (IGE) - the government's estimate of the projected cost or price of the resources a contractor will incur in the performance of a contract. An IGE can be one of two types: an Independent Government Price Estimate (IGPE) or an Independent Government Cost Estimate (IGCE).

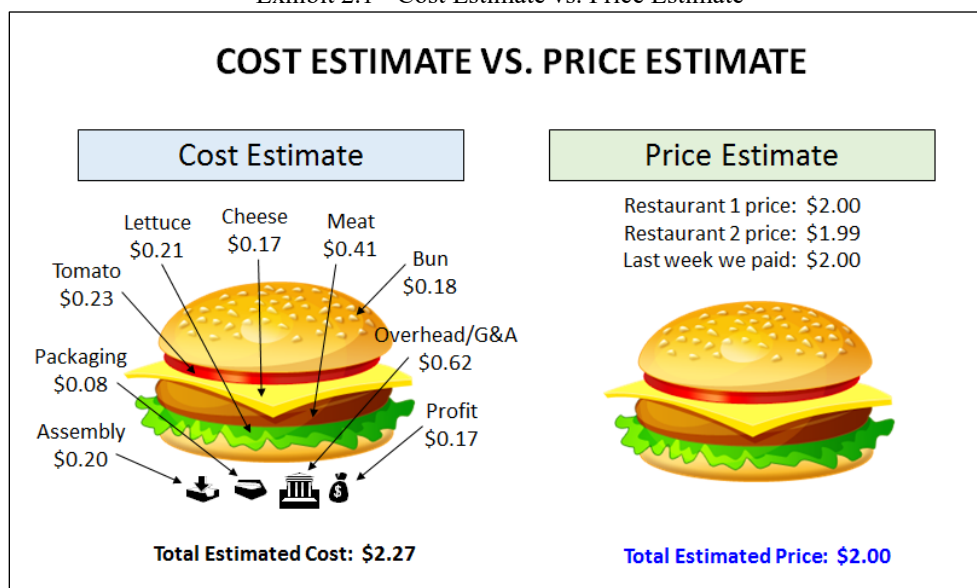
Independent Government Price Estimate (IGPE) - a basic estimate of the anticipated price for products, equipment, and simple services that are routinely available on the open market at competitive prices. The price estimate must be independently developed based on a comparison and analysis of factors such as published catalog prices, historical prices paid, market survey information, and contractor price quotes.

Independent Government Cost Estimate (IGCE) - a detailed estimate that requires a breakdown of costs anticipated in performance of the contract. These costs include 1) direct costs such as labor, products, equipment, travel, transportation and other direct costs; 2) indirect costs such as labor overhead, material overhead, fringe benefits, and general and administrative (G&A) expenses; and 3) profit or fee (amount above costs incurred to remunerate the contractor for the risks involved in undertaking the contract).

2.3. Types of IGEs

As described in its definition, an IGE can be one of two types: an Independent Government Cost Estimate (IGCE) or an Independent Government Price Estimate (IGPE). This delineation between cost estimates and price estimates allows the estimator to prepare the proper type of estimate for their acquisition. For example, a cost estimate with a detailed breakdown of individual cost elements is not appropriate for an acquisition of commercial item supplies. The distinction between cost estimates and price estimates also aligns better with FAR descriptions of “cost” vs. “price.” A simplified example of the distinction between a cost estimate and a price estimate is shown in the figure below.

Exhibit 2.1 - Cost Estimate vs. Price Estimate



EPAAG 7.1.3.6 provides guidance on when an IGPE versus an IGCE is required. Estimators and COs should follow this guidance and tailor the level of detail for each type of IGE specific to each acquisition.

2.4. Purpose of IGEs

A successful acquisition requires collaboration between the program and contracting offices. When a Program Office prepares a meaningful IGE, the CO uses that estimate for many purposes to assist with the acquisition. The primary purposes are described below:

Establishing the Value of the Acquisition

One purpose of the IGE is to determine the estimated value of the acquisition. The estimated dollar value of the products or services to be acquired will trigger numerous statutory and regulatory requirements and considerations, including, but not limited to:

- The acquisition procedures that can be used.
- The levels of competition and publicizing that are required.
- The levels of review and approval that are required for various steps in the acquisition.
- The levels of file documentation that are required.
- The small business set aside requirements that may apply.
- The various labor laws, trade agreements, and sustainability requirements that may apply.
- The amount and type of information offerors must provide in responding to a solicitation.
- The levels of evaluation the Government must perform on offers/quotations received.
- The provisions and clauses that must be included in the solicitation and contract.
- The consideration of whether or not a proposed change or modification is within scope.

Evaluating an Offeror's Proposed Price

Perhaps the most important purpose of the IGE is as a tool to evaluate, compare, and document the evaluation of cost proposals, price proposals, bids, or quotations received in response to a Government solicitation. The Government can compare the IGE to the offers or quotations received to help determine that:

- The offeror's proposed total price is fair and reasonable.
- The offeror's proposed unit and/or total price is realistic.
- The offeror's proposed total costs are realistic and reasonable.
- The offeror's proposed direct costs (e.g., labor rates, ODCs, travel, etc.) are reasonable.

IGEs are Critical in Noncompetitive Situations

The use of the IGE in the evaluation of cost and/or price is a *critical* tool to the Government in noncompetitive situations. Such situations arise when only one offer/quotation is received, the contract award will be made on a sole source basis, or when an order is being solicited and awarded to a single contract holder.

- The offeror's proposed indirect costs (e.g., fringe, overhead, G&A, etc.) are reasonable.
- The offeror's proposed fee is reasonable.

Evaluating an Offeror's Technical Understanding

Another important use of the IGE is to help determine whether an offeror has a solid technical understanding of the Government's requirements. For example, if an offeror submits a Cost Proposal in response to a solicitation containing proposed labor costs that are three times greater than the labor costs anticipated by the Government in its IGE, those proposed labor costs may be investigated in order to help determine whether or not the offeror understood the SOW requirements. Conversely, if multiple responses received to a solicitation contain vastly different prices or costs compared to the IGE, it may reveal that the Government's requirement was not clearly described. The Government can compare the IGE to the technical proposal or quotation received to help determine whether or not:

- The offeror's technical understanding of the Government's requirement is complete.
- The offeror's technical solution overstates or understates the work required.
- The offeror's technical solution (e.g., proposed products, labor mix, subcontracts, etc.) is sound.
- The offeror's technical solution contains new ideas and/or new technologies that were not originally contemplated by the Government.
- The Government's requirement is properly described.

Developing Prenegotiation Objectives

IGEs are often used to help develop prenegotiation objectives. The differences and similarities between the IGE and offeror's proposal should be highlighted. The CO and COR should then work together to determine the Government's prenegotiation objectives and the issues to discuss during negotiations. Desired outcomes should be documented as part of the CO's Prenegotiation Plan.

Budgeting Contract Costs

A good IGE can be used to assist the COR in preparing the budget for the contract. With a good IGE, the COR is able to prioritize areas of scope and cost concern, as well as monitor the work in process for all tasks, task orders, and/or delivery orders under the contract. It is imperative to keep in mind that the IGE is an *estimate* and may differ from the award amount and actual cost of the contract at completion. In an ideal situation, differences will be insignificant. In the event there are significant differences, CORs and COs can closely analyze the differences between the IGE and actual contract cost to understand why those differences occurred and how they may impact future estimates and budgeting. Significant differences should be documented for future reference and budget estimating purposes.

2.5. Roles and Responsibilities

The requiring official, either the Project Officer or the COR, is the estimator responsible for preparing the IGE. Estimators shall ensure that they comply with the requirements of the FAR and EPAAG 7.1.3, as well as any program office requirements and thresholds for preparing IGEs. The IGE shall be included and approved with the Advanced Procurement Plan (APP) if an APP is required in accordance with EPAAG 7.1.1. If an APP is not required, the IGE shall be included with the requisition. The accuracy and completeness of the IGE are the responsibility of the estimator, not the CO. However, the CO should be considered a resource to address specific contractual issues. Teamwork between the Contracting Office and the Program Office is vital for the development of a good IGE.

The CO shall review the IGE to ensure it is accurate, complete, and appropriate for the size and complexity of the acquisition. The CO may require additional detail or information from the estimator based on the specifics of the acquisition. The CO must approve the IGE prior to solicitation; approval can be given through the COs acceptance of the APP and/or requisition containing the IGE.

2.6. Safeguarding IGEs

The IGE is considered Source Selection Information and must be handled accordingly. Access to the IGE is on a need-to-know basis. The Government should not task a contractor with preparing its IGE, particularly if that contractor may be competing for the requirement. Estimators must not seek input on IGE creation from the contractor when an order will be solicited and awarded to that contractor under a single award contract.

“Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate...”

“...contracting officers shall ensure that the information is not publicized or discussed with potential contractors...”

FAR 5.401(a) & FAR 36.605(b)

CHAPTER 3 INDEPENDENT GOVERNMENT PRICE ESTIMATES

This chapter describes how to develop and document an Independent Government Price Estimate (IGPE).

3.1. What is an IGPE?

An IGPE is a basic estimate of the anticipated price for products, equipment, and simple services that are routinely available on the open market at competitive prices. The price estimate must be independently developed based on a comparison and analysis of factors such as published catalog prices, historical prices paid, market survey information, and contractor price quotes.

I don't see *Independent Government Price Estimate* in the FAR

The term *IGPE* is not defined in the FAR, nor is *IGCE* for that matter. But the FAR does contemplate Independent Government Estimates that don't require a detailed breakdown of cost elements (e.g., FAR 13.106-3). Agencies like DoD have begun to draw the distinction between Government *cost estimates* and *price estimates* based on the complexity of the acquisition (see [*Department of Defense COR Handbook, March 22, 2012*](#)). This distinction between *cost estimates* vs. *price estimates* is made in the same way that the FAR distinguishes between concepts such as *cost* vs. *price* and *cost analysis* vs. *price analysis*; the term IGPE was created at EPA to be distinct from IGCE in the same way.

A price estimate is typically easier to develop than a cost estimate, but the importance of the having a good estimate is still vital. Developing the price estimate is a matter of determining the market value of the supplies or services, documenting the market research, and furnishing this information along with the funded requisition to the CO.

3.2. When to Use an IGPE

EPAAG 7.1.3 guides estimators to use an IGPE in the following instances:

Supplies against existing EPA IDIQs, BPAs, and Strategic Sourcing Vehicles

An IGPE is appropriate when purchasing supplies against existing EPA indefinite-delivery indefinite-quantity (IDIQ) contracts, blanket purchase agreements (BPAs), and Strategic Sourcing Vehicles. Since the prices for these products are specified in the master contract vehicle, the estimator can rely on those prices to develop the price estimate for any delivery order against the contract vehicle. The estimator may need to contact the CO to obtain unit prices stated in the contract or agreement in order to calculate the total. In the case of multiple award contracts, the CO may give the estimator a range or average unit price to assume in creating the estimate. The CO may also let the estimator know if additional discounts should be anticipated.

Supplies and Simple Services under the SAT

An IGPE is appropriate when purchasing supplies and simple services under the Simplified Acquisition Threshold (SAT). Refer to FAR 2.101 for the current threshold. As described in the FAR, acquisitions below the SAT are intended to reduce administrative costs and avoid unnecessary burdens for agencies. As such, estimates for supplies to be purchased below the SAT should generally consist of the unit and total price anticipated to be paid based on market research. Estimates for simple services to be purchased below the SAT (such as office machine maintenance, stenographer services, and training courses) that are typically priced by vendors on a firm-fixed-price or fixed-unit-price basis, should also generally consist of the unit and total price anticipated to be paid based on market research.

Supplies over the SAT that are Commercial Items

An IGPE is appropriate when purchasing supplies over the SAT that meet the definition of a commercial item (see FAR 2.101). Estimates for commercial items, particularly commercial-off-the-shelf (COTS) items with stable specifications, even for acquisitions greater than the SAT should generally consist of the unit and total price anticipated to be paid based on market research. The estimator should research past price history and adjust for any changes in specifications, quantities, or inflation factors. When the Government's requirements deviate from COTS specifications or when the estimated value of the acquisition is very high, the estimator should plan to include more detailed information in the IGPE.

3.3. Methods for Price Estimating

Below are some recommended methods that can be used to determine the market value of products and services:

- *Existing Contract Prices.* Purchasing from existing contracts such as Strategic Sourcing vehicles allows estimators to use the prices established in the contract as the basis for the price estimate.
- *GSA schedules.* The schedules are pre-priced and awarded to multiple firms for specific supplies and services. GSA schedules may be found at <http://www.gsaadvantage.gov/>.
- *Published price lists.* These lists are published by individual companies for use by the general public.
- *Catalogs.* Many manufacturers publish catalogs describing their offerings and stating their prices. The catalogs may be made available to customers in hard copy, on a Web site, or some other format.
- *Market surveys.* A market survey is a comparison of the prices offered within the local area for an item. A survey is normally done in conjunction with the Contracting Officer.
- *Previous buys.* Previous purchases of the same item can be used as the basis for an estimate, assuming comparability in quantities, conditions, terms, and performance times. Adjustments should be considered for inflation and quantity discounts, when appropriate.

The estimator should include the method(s) used as part of the IGPE.

3.4. Documenting the IGPE

EPA has no standardized forms or formats for documenting IGPEs. The documentation for an IGPE will vary based on the specifics of the acquisition. The estimator should work with the CO to determine the appropriate type and level of detail necessary to properly document the IGPE for each contract action.

EPAAG 7.1.3 offers the following general guidelines as recommendations for documenting IGPEs:

Exhibit 3.1 - Documentation Guidelines for IGPEs

Acquisition Procedures	Documentation
Any < MPT	None unless the buyer considers necessary.
Supplies against EPA IDIQs, BPAs, and Strategic Sourcing Vehicles	State the total estimate on the requisition based on the established IDIQ/BPA prices.
Supplies < SAT but > MPT	State the total estimate on the requisition and include evidence of market research to support the estimate; <u>or</u> Prepare a simplified written IGPE that estimates the price for each line item of supply and in total.
Supplies > SAT (commercial)	Prepare a simplified written IGPE that estimates the price for each line item of supply and in total. Include cost detail as necessary.
Services < SAT (FFP) but > MPT	Prepare a simplified written IGPE that estimates the price for each PWS/SOW task and in total.

3.5. Samples/Templates

Sample IGPEs are available as part of the *Independent Government Estimates Toolkit* on the OAM Knowledge Management Site (KMS) at: <https://usepa.sharepoint.com/sites/OARMCommunity/oam.kms>.

CHAPTER 4 INDEPENDENT GOVERNMENT COST ESTIMATES

This chapter describes how to develop and document an Independent Government Cost Estimate (IGCE).

4.1. What is an IGCE?

An IGCE is a detailed estimate that requires a breakdown of costs anticipated in performance of the contract. These costs include 1) direct costs such as labor, products, equipment, travel, transportation and other direct costs; 2) indirect costs such as labor overhead, material overhead, fringe benefits, and general and administrative (G&A) expenses; and 3) profit or fee (amount above costs incurred to remunerate the contractor for the risks involved in undertaking the contract).

The IGCE must be the Government's independent estimate and must be based upon information specific to the work required. Cost data supporting the IGCE is not to be obtained from contractors or vendors from which proposals will be solicited as such data is not independent. An IGCE is the Government's estimate of what a responsible contractor should propose, based on the statement of work (SOW), and should not be divulged to any potential contractor. The IGCE should represent a "fair and reasonable" cost of doing the work.

Throughout the acquisition process, COs and CORs use IGCEs to analyze the contractor's costs and associated technical approach. IGCEs provide (1) key indicators regarding the contractor's understanding of the requirement, (2) a method by which to identify the consistency between the cost proposal and the projected technical effort, and (3) a method by which to determine price reasonableness.

4.2. When to Use an IGCE

EPAAG 7.1.3 guides estimators to use an IGCE in the following instances:

Supplies over the SAT that are Noncommercial Items

An IGCE is appropriate when purchasing supplies over the simplified acquisition threshold (SAT) that *do not* meet the definition of a commercial item (see FAR 2.101). Estimates for noncommercial items over the SAT should include an estimate of the major cost elements and for each line item of supply and in total, including the ultimate estimated unit and total price. The estimator should include direct and indirect cost detail for each item of supply and for major components. The level of detail necessary in the IGCE will be based on multiple factors including the value of the acquisition, the amount of materials/components that make up the item of supply, and the amount of existing cost or price information on the item of supply.

Services over the SAT

An IGCE is appropriate when acquiring services over SAT. This covers a very broad range of services acquired by the agency, from routine commercial services just over the SAT, to highly

complex technical services to be performed with vaguely defined requirements, to construction and architect-engineering services, to task orders placed under existing EPA contracts. Because of the broad range of services this agency acquires and the numerous methods through which they are acquired, estimators should develop an IGCE with a level of detail that is commensurate with the complexity, value, and risk of their requirement. The procedures of Chapter 5 will assist the estimator with developing an IGCE for services, though the estimator must use their best judgment when deciding on the specificity, level of detail, and supporting documentation necessary to properly complete the cost estimate.

Services less than the SAT when the contract is “high risk”

An IGCE is appropriate when acquiring services under the SAT when the contract is “high risk” such as the use of a contract type other than firm-fixed-price (FFP) (e.g., cost reimbursement (CR), time-and-materials (T&M), or labor hour (LH). This includes task orders placed on another than FFP basis. As with IGCEs for services greater than the SAT, estimators must use their best judgment when deciding on the specificity, level of detail, and supporting documentation necessary to properly complete the IGCE for high risk service acquisitions.

IDIQs/BPAs for services or noncommercial supplies

An IGCE is appropriate when anticipating the award of an indefinite-delivery indefinite-quantity (IDIQ) contract or blanket purchase agreement (BPA) for services or noncommercial supplies. IDIQs and BPAs are typically awarded with high maximum values and with long term ordering periods. Ordering officers will also rely heavily on the prices established in the IDIQ or BPA when making the determination that the award amount of their orders is fair and reasonable. For these and other reasons, greater detail is necessary when estimating the IDIQ or BPA, even for commercial item services to be ordered on a FFP basis.

4.3. Methods for Cost Estimating

IGCEs represent forecasts, and therefore cannot be predicted with absolute certainty. EPA's goal for cost estimates is to achieve predictions that are as accurate as possible using the best information and the best estimating techniques available for a given situation. There are benefits and limitations associated with the use of each pricing method. The method used by the estimator depends on data availability and the type of program being evaluated.

It is important to remember that a SOW must be written before an IGCE can be prepared. Most often, writing a SOW usually evolves from the general to *specific*. The SOW starts with a general description of the work to be performed, desired or required outcomes, and delivery or performance schedules. These general functions are the basic tasks to be performed.

More on IGCEs

Chapter 5 of this guide provides more detailed guidance on preparing IGCEs, including steps to follow, identifying cost types, how to estimate those cost elements, as well as documenting and validating the cost estimate.

As the writer further analyzes the requirements, tasks may be broken down further into subtasks. The process by which detailed tasks break down from the general description to the more

specific description is called a Work Breakdown Structure (WBS). A WBS approach is an important step for developing an IGCE.

Most estimating methods involve the use of available *historical data*. If a program is in the early planning stages, formal supporting databases may not exist. However, there may be sufficient in-house experience and prior contracts for similar work, which will provide information to assist the Program Office in estimating projected pricing for SOW requirements. In this method, historical data and experience is the basis for IGCE pricing.

Analogy is another estimating technique. Analogy uses the cost of a similar program as a basis for the new program, and adjusts costs to account for program differences identified in the SOW.

The estimator should include the method(s) used as part of the IGCE.

Exhibit 4.1 - The Two Most Common Methods for Estimating

The two most common methods for estimating are the "top-down" or "bottom-up" approaches:
<p><u>Top Down Method</u></p> <p>The top down method is typically used in the early planning stages of a project when the precise quantities or needs are not yet known, requirements are not fully defined, or detailed specifications are not available. The estimate results in an "order-of-magnitude" projection of costs, and should be refined as the work product becomes more defined. The top down approach does not detail all peripheral costs of tasks and subtasks, such as travel, site preparation access, regulatory permitting costs, specific license requirements, mainframe time-share costs or software. However, some estimates for the cost of these items should be included. Ultimately, this method is expected to evolve into the Work Breakdown Structure as more detail is added.</p> <p><u>Bottom-up or Engineering Method</u></p> <p>The bottom-up method is called the detailed estimate and represents the opposite end of the cost estimating spectrum. This method is often used to reverse engineer a product by taking the item apart, defining each of the separate parts, and combining each part into a description or specification. The database for a bottom-up estimate must be a comprehensive and detailed representation of the accumulated experiences of many previous and similar projects. Even with this method, adjustments to accommodate the instant requirement are likely.</p>

4.4. Documenting the IGCE

EPA has no standardized forms or formats for documenting IGCEs. The documentation for an IGCE will vary based on the specifics of the acquisition. The estimator should work with the CO to determine the appropriate type and level of detail necessary to properly document the IGCE for each contract action.

EPAAG 7.1.3 offers the following general guidelines as recommendations for documenting IGCEs:

Exhibit 4.2 - Documentation Guidelines for IGCEs

Acquisition Procedures	Documentation
Supplies > SAT (noncommercial)	Prepare a written IGCE that estimates the price for each line item of supply and in total. Include direct and indirect cost detail for each item of supply and for major components.
Services < SAT (T&M / LH) but > MPT Services > SAT (FFP) Services against EPA IDIQs/BPAs (FFP / T&M / LH)	Prepare a written IGCE that estimates direct costs, indirect costs, and price for each PWS/SOW task and in total (based on established contract prices/rates if applicable). Include a narrative description of all assumptions and conditions.
Services < SAT (cost reimbursement) but > MPT Services against EPA IDIQs/BPAs (cost reimbursement)	Prepare a written IGCE that estimates direct costs, indirect costs, fee, and total estimated cost for each PWS/SOW task and in total (based on established contract rates if applicable). Include a narrative description of all assumptions and conditions.
Services > SAT (cost reimbursement) Services > SAT (T&M / LH) Services > SAT (IDIQ or BPA)	Prepare a detailed written IGCE that estimates direct costs, indirect costs, fee, and total estimated cost/price for each PWS/SOW task and in total. Describe the team that developed the estimate, the estimating method(s) used, and supporting data/documentation. Include all calculations in the estimate. Include a detailed narrative description of all assumptions and conditions.

4.5. Samples/Templates

Samples of IGCEs are available as part of the *Independent Government Estimates Toolkit* on the OAM Knowledge Management Site (KMS) at: <https://usepa.sharepoint.com/sites/OARMCommunity/oam.kms>.

CHAPTER 5 PREPARING THE IGCE

This chapter provides information and guidance for estimators to prepare an Independent Government Cost Estimate (IGCE).

5.1. Steps to Preparing an IGCE

The basic steps to preparing an IGCE are as follows:

1. Develop the statement of work;
2. Estimate level of effort;
3. Estimate labor cost, including escalation, fringe benefits, and labor overhead;
4. Estimate costs for travel, special equipment, subcontract, and other direct costs;
5. Apply indirect factors including general and administrative (G&A), material handling, subcontract administration, and other applicable indirect factors;
6. Add fee or profit; and
7. Review and approve the completed IGCE.

IGCE Preparation Time

The amount of time and effort required to prepare an IGCE will vary with the size and complexity of the project. Generally, the more detailed, the more useful the IGCE.

While recognizing that there may be slight differences between programs or regions in how costs are estimated (i.e., subtask structure, ODCs), estimators should follow these basic steps, as applicable to the instant requirement. These steps and elements are further described in this chapter.

5.2. Statement of Work (SOW)

The basic requirement for developing a sound and defensible IGCE is a good SOW. The SOW is the source document that defines the Government's requirement for a product, project, or service. It provides information on the requirement, description of the efforts required, and the timing and location of the effort. A good SOW provides the necessary foundation for EPA to contract for goods and services at a fair and reasonable price, and get the best product, project or service on time and within budget.

SOW or PWS?

Although the term *Statement of Work (SOW)* is used throughout this document, the Federal Government and EPA have a strong preference for performance-based contracting (see FAR 37.6 and EPAAG 37.6.1).

Every effort should be made by requiring offices to develop their requirements as a *Performance Work Statement (PWS)*.

In addition, the SOW is also used to: develop the performance schedule, establish evaluation criteria for negotiated contracts, provide a basis of measurement for analyzing contractor performance, identifying deliverables, and develop the work breakdown structure (WBS).

5.3. Work Breakdown Structure

The work breakdown structure (WBS) is a critical element in the development of the IGCE and may be completed as a part of the SOW process. A well written SOW should permit the user to develop a WBS for the requirement. A WBS:

- provides an overall illustration of the work to be performed;
- offers some assurance that all required tasks and subtasks are considered;
- identifies activities, deliverables and milestones;
- provides a baseline to track actual versus estimated costs (hence: helpful with identifying potential cost over-runs and under-runs); and
- may be used to identify potential redundant tasks.

A WBS is prepared by dividing a requirement, project or service into its major tasks and increasingly smaller subtasks. This division into small subtasks makes it easier to: (1) identify the work required, (2) determine required staffing needs, and (3) estimate the initial cost for the desired output. The WBS permits the estimator to price quantities such as man-hours, number of trips, duration of trips, and equipment. The WBS also assists the estimator in determining the types of labor required. The following sources may be used to develop the WBS:

- existing database for similar work being performed on comparable contracts with adjustments for differences;
- round table discussions with Government experts, supervisors and peers;
- personal experiences and professional judgment;
- available Government models for the type of work required; and
- historical data on similar contracts. (*Caution: Never completely rely on historical data, as most SOWs generally change over time.*)

Program Office Time Budgeting

Program Offices need to budget for the amount of time it takes to develop and prepare the SOW. Developing detailed descriptions of the technical requirements for materials, products, services, and criteria for determining whether the requirements are met may take a lot of time. A rushed project will usually result in a poor SOW with incomplete requirements, and may lead to technical and performance problems with the contract and/or cost overruns.

A WBS is an important tool not only for estimating initial costs, but for scheduling the work, managing the resources and costs, and tracking the deliverables (expended effort) throughout the period of performance. Computer assisted software, such as Microsoft Excel, provides automated spreadsheets that may help users easily adjust a WBS's content.

The following is an example of a WBS for constructing a garage:

Exhibit 5.1 - Sample Work Breakdown Structure for a Garage

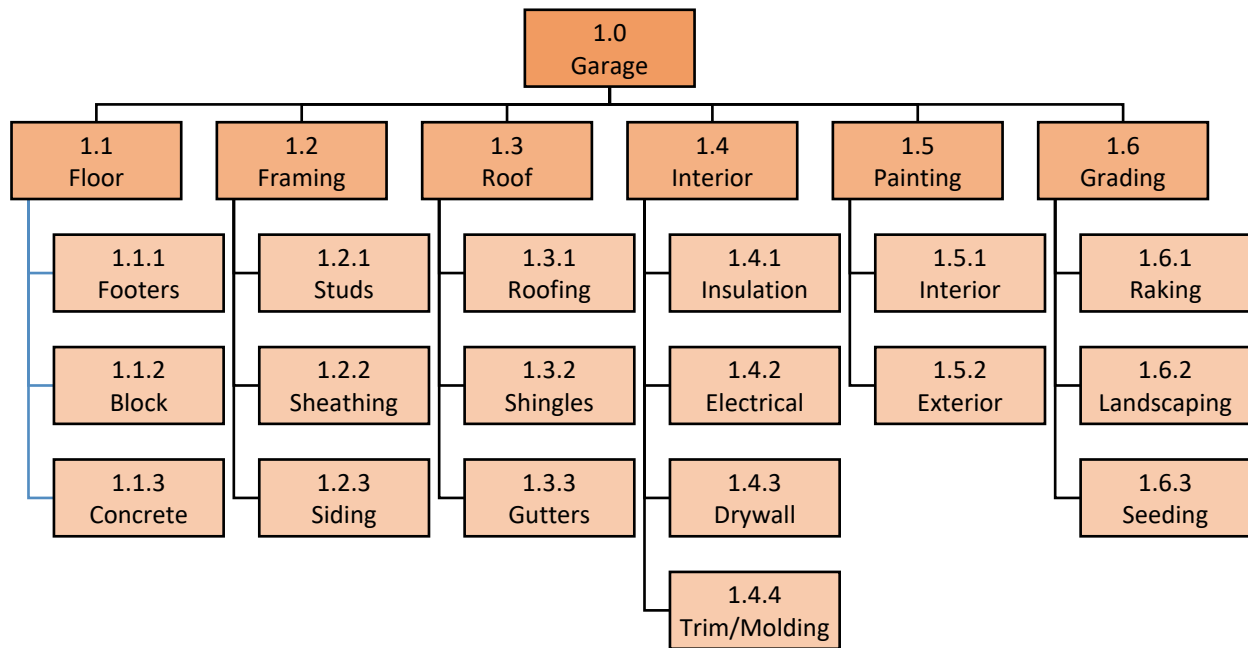


Exhibit 5.2 - Garage Direct Labor Effort

Tasks & Subtasks	Laborers	Electrical	Carpenters	Brick Layers	Concrete Finishers	Drywall Installers	Painters	Total
1.1 Floor / Foundation								
1.1.1 Footers	12		6					18
1.1.2 Block				10				10
1.1.3 Concrete Floor	12				12			24
1.2 Framing								
1.2.1 Studs	24		50					74
1.2.2 Sheathing			16					16
1.2.3 Siding			16					16
1.3 Roof								
1.3.1 Roofing			16					16
1.3.2 Shingles			16					16
1.3.3 Gutters			6					6
1.4 Interior								
1.4.1 Insulation	6							6
1.4.2 Electrical		16						16
1.4.3 Drywall						32		32
1.4.4 Trim			8					8
1.5 Painting								
1.5.1 Interior							5	5
1.5.2 Exterior							8	8
1.6 Grading & Finishing								
1.6.1 Rake and Clean	16							16
1.6.2 Landscaping	7							7
1.6.3 Seeding	1							1
Direct Labor Hours	78	16	134	10	12	32	13	295
Labor Rates	\$15	\$30	\$25	\$30	\$20	\$20	\$20	
Total Direct Labor	\$1,170	\$480	\$3,350	\$300	\$240	\$640	\$260	\$6,440

5.4. Databases

A database is a collection of information. The simplest form of a database is a list. More complex databases are computerized and contain many different types of information, which can be sorted to provide printouts in different formats to fit the needs of the user. Each program should develop databases appropriate to their needs. In almost every situation, maintaining a database of similar projects will facilitate the IGCE preparation process.

The estimator is strongly cautioned not to rely completely on historical data. Historical data may, in some instances, reflect quantities and prices that are unreasonable and unacceptable under current conditions, or include inefficiencies for past work. Although historical databases are a good starting point, the estimator should adjust the IGCE to fit current requirements.

Historical databases usually consist of two primary categories: (1) the quantity of items to be acquired such as hours (level of effort), pieces of equipment, number of service calls of a particular type, number and duration of trips; and (2) the specific costs incurred or prices paid for these items.

Database of Quantities

A database of quantities reflects projects that are similar in scope (i.e., type of work and size) to the project for which the estimate is being prepared. If no formal database exists, the estimator may review invoices and monthly progress reports containing the actual costs incurred for TOs/DOs which were issued for similar requirements. The information may or may not be broken down into task and subtask level of detail to create a meaningful analysis.

Database of Costs

A database of costs consists of specific cost or pricing information such as direct costs (hourly labor rates, travel costs, equipment costs), indirect costs, fixed rates or prices and unit prices. If there is no formal database, the estimator can review alternative sources such as prior invoices or progress reports, and use his or her personal knowledge relevant to the procurement. If the IGCE is being prepared for a TO/DO on an existing contract, the contract will contain the primary cost data required to prepare the IGCE.

If relevant databases are unavailable, the estimator may consult with other programs or agencies where similar work is performed to obtain assistance. Examples of other agencies which may have useful information are the U.S. Army Corps of Engineers for Superfund Clean-up, or GSA for Information Technology requirements. Task Order Project Officers, and Delivery Order Project Officers may also consult with senior or more experienced CORs to obtain historical knowledge of program costs. Each major Program Office should take steps to develop and maintain databases for all work commonly performed by contractors.

Database Updates

It is extremely important to keep a database updated once it is in place. Some EPA programs may have to update their contract reporting requirements.

Updated reporting data may be a useful tool for preparing IGCEs, staying within budgets, and better overall management of the contracts and budgets.

5.5. Identifying Cost Types

An IGCE is essentially a forecast of a broad spectrum of costs the estimator believes the Government will incur for services and/or supplies to be acquired, generally from contractors. The estimated cost also includes profit or fee that the contractor may earn. When preparing IGCEs, Program Office personnel should exercise professional judgment as to the detail required for each cost element. External forces, such as time constraints or funding limitations should not impact IGCE development.

Contractors incur costs in two broad categories, direct costs and indirect costs. Direct costs are costs that may be directly associated with performing the project or contract. Indirect costs are common expenses for daily management of a project or contract. A distinction is made between direct and indirect costs because they are given different accounting treatments. This distinction ensures that a contractor's invoice consists of both the direct costs of performing work, and only indirect costs for which the Government receives a benefit.

It is important to have a general understanding of the difference between direct and indirect costs when preparing an IGCE. The Federal Acquisition Regulation (FAR) 31.202 and 31.203 describe these terms as follows:

Exhibit 5.3 - Direct Costs and Indirect Costs Defined

Terms & Definitions
<p>Direct costs are costs that can be directly associated with a particular project or contract. If a cost is incurred specifically for a contract and would not otherwise be incurred, it is a direct cost. Examples of direct costs include, but are not limited to, the following: direct labor, material, travel, equipment, subcontract, consultant, computer usage, and courier service. An estimator preparing an IGCE has more control over direct costs than indirect costs.</p> <p>Indirect costs are not directly associated with a specific project or contract. These costs are essential elements to the business process. Indirect costs include rent, heat, light, depreciation, office supplies, legal fees, telephone, and management salaries. Indirect costs also include a fringe benefits package offered to employees such as health insurance, annual leave, tuition reimbursement, and training.</p>

There is no specific rule or cost principle which defines whether a particular cost will be direct or indirect. Costs may be treated as direct or indirect, depending upon the circumstances, as long as the contractor consistently applies the cost method adopted. The elements in an indirect cost pool can and will vary from contractor to contractor.

For example, clerical labor is an element of cost that can be charged direct or indirect depending on the contractor's practices. Another example is the method by which a contractor accounts for the costs of photocopying; some contractors accumulate such costs in indirect pools while other contractors set up direct accounts for each contract, task order (TO) or delivery order (DO). It is important for the estimator to understand the method by which a contractor charges different cost elements on current contracts.

It is also important to remember that a contractor cannot be directed or required to charge a cost in a way that differs from their usual accounting practice unless the procedure is in violation of

generally accepted accounting principles. For example, if a contractor's accounting practice is to direct charge the company president's time when meeting on problems dealing with a specific contract, EPA cannot direct or require that contractor to charge the president's time to an indirect account when holding meetings on a specific contract.

Contractors may have one indirect rate or dozens of indirect rates. The number of indirect rates depends on a contractor's individual accounting system. All contractors will have, at minimum, one indirect rate. Many contractors utilize two common indirect rate categories (i.e., Labor Overhead and General and Administrative [G&A]). The overhead pool base may be direct labor dollars, direct labor hours, machine hours, direct material costs, or other applicable base. The most common base is direct labor dollars. On an existing contract, it is necessary for the IGCE estimator to know the contractor's basis for allocating indirect costs when preparing an IGCE. On a new procurement, it is necessary for the estimator to select a rational indirect cost allocation base and document the selection. However, the estimator should keep in mind that the contractor that is awarded the contract may use a different allocation base than estimated.

G&A expenses are generally incurred for the overall management of a company. Examples of expenses found in G&A pools are salaries for upper management, accounting and legal expenses, and rent and utilities for corporate offices. Although other allocation bases may be appropriate for allocating G&A expenses, the most frequently used G&A allocation base is total costs. An alternative G&A base may exclude subcontract and material costs (i.e., value-added base).

Contractors may also have different overhead burden rates when employees work at remote sites (i.e., field office overhead) instead of the home office facility. The field office overhead rate tends to be lower because rent costs, furniture costs, and utilities are not incurred for those employees.

On existing contracts, there may be instances where the estimator is aware that the required work falls within the expertise of one or more of a prime's team subcontractors. In these instances, the IGCE should be based on the subcontractor's rates and include any oversight costs required by the prime contractor.

Estimators should note that there is no specific rule that identifies an acceptable versus unacceptable indirect rate factor. No one can make an informed opinion about a company's proposed costs from comparison of indirect rate(s). A complete understanding of the pools, bases, and the accounting system is required.

It is strongly recommended that an automated cost template or worksheet be set up for each contract, TO, or DO. This will prevent simple math errors and allow for changes with minimum effort. Remember to update the documentation whenever a template changes.

Questions regarding indirect rates should be addressed to OAM's Financial Analysis & Oversight Service Center (FAOSC).

5.6. Level of Effort

Level of Effort (LOE) is the number of labor hours required to complete a particular requirement. Because such a large percentage of EPA's contracts are labor intensive, a good Government estimate for direct labor is fundamental to a clear, concise, and complete IGCE. Preparing a good estimate for direct labor is both the most difficult and the most important part of the IGCE. In order to prepare a reliable direct labor estimate, the estimator must have a good understanding of the work required, and work requirements should be clearly defined in the SOW.

Use of P&T Levels

In December 1998, the Office of Acquisition Management (OAM) discontinued the practice of specifying Professional and Technical (P&T) levels in Superfund-related requests for proposals. Although, the SOW should specify labor by job title, P&T levels may be used to develop IGCEs and help interpret historical data.

The estimator is responsible for determining the appropriate labor classifications and level of expertise based on input from program experts. One effective method of obtaining available Government expertise is to use the **round table method**. This involves bringing together Government representatives who have specific knowledge and experience with the current contract requirement. Each invited expert should be given a copy of the SOW and asked to develop a LOE estimate. At the round table discussions, differences between the expert's estimates may indicate SOW weaknesses or discrepancies. When SOW requirements are clear, the experts will understand the required work to be performed. However, an unclear and disorganized SOW may result in widely disparate estimates. The round table discussions should provide for invited experts to discuss all aspects of the contract requirement. These discussions will probably result in modifications to both the individual estimates as well as adjustments to the SOW. The ultimate result of this approach is a better IGCE.

Exhibit 5.4 - General Descriptions of P&T Level of Expertise

The following examples provide general descriptions of the various P and T levels of expertise:	
P-4	This is an individual who has management authority, and has usually 10 years or more of experience coupled with an advanced degree of a Master's or higher. The contractor's contract manager, senior level engineers, scientists, economists, and other experts are examples of this category. P-4s are the equivalent of GS-15s and above. These people operate with wide latitude and have final decisional authority.
P-3	The P-3 individual is someone who operates under the general supervision of the project or contract manager but also may oversee assignments of less senior people. This level typically has a Master's Degree or a combination of education and experience that equals that degree. These individuals also have six (6) years of experience or more. P-3s are the equivalent of GS-14s or senior GS-13s.
P-2	A P-2 is someone with a four (4) year college degree and three (3) or more years of experience. This individual works under the supervision of a senior manager or P-3 leader and may coordinate the activities of P-1 or technical people. The GS equivalent would be 9s, 11s or 12s.
P-1	This is a junior individual with a four (4) year degree and no experience, or less than a 4 year degree but experience to make up the equivalent difference. The P-1 is usually the entrance

	level where the individual is one who gathers information, works on simpler tasks under a TO/DO, and could do routine analysis. The GS equivalent would be 5s and 7s.
T-3	This individual is someone without a four (4) year degree but has senior technical experience and who can perform non-routine assignments. This is an individual with high technical expertise who may also have a two (2) year degree and three (3) years of experience or more. The GS equivalent would be at the 7 or junior 9 level in a non- professional series.
T-2	This individual typically performs standardized assignments and does routine trouble- shooting. The individual has technical training and experience but no formal degree. This person could be compared to a GS at the senior 5, 6 or junior 7 level.

5.7. Labor Cost

Once the number of hours are estimated (i.e., LOE), completing the direct labor cost estimate includes multiplying the number of estimated hours by the labor rates. Following are recommended steps for estimating direct labor rates for different requirements:

New contracts (Unique New Requirement – No similar work to compare)

The estimator and CO should work together to decide (1) the best approach for describing the contract's job categories, and (2) the best method by which to estimate IGCE rates. Methods may involve the use of salary survey or Government pay scales.

New or follow-on contracts (New Requirement – Previous or similar work to compare)

Use historical databases from previous work, with adjustments to account for escalation and differences due to work complexity. The estimator may also use salary surveys, government pay scales, or other resources as a labor cost basis. Always document the decision in writing.

Task or delivery order under an existing time and materials fixed loaded rate type of contract

Use the negotiated rates listed in *Section B-Supplies or Services and Prices/Costs* of the contract for each applicable labor category. Note these rates already include not only the average or composite hourly labor rate for that job category, but also all indirect rates and profit.

Davis-Bacon Act (DBA) & Service Contract Act (SCA)

If the contract is subject to the DBA or SCA, the Department of Labor provides a single location for federal contracting officers to use in obtaining appropriate SCA and DBA wage determinations (WDs) for each official contract action. The estimator should consult the Wage Determinations Online (WDOL.gov) website to obtain the appropriate WDs. Also, guidance in selecting WDs from this website is provided in the WDOL.gov User's Guide.

Task Order, or Delivery Order under an existing cost type contract

Ensure that estimated labor categories on task orders, or delivery orders under an existing contract, are identified on the contract. Usually, average negotiated labor rates have been established for each general labor category. Estimators should use the existing labor rates

specified in the contract. In situations in which the level of expertise or personnel required for a new order is significantly higher or lower than labor rates on the contract, the best approach may be to determine and use the contractor's actual average labor rates. In this instance, the estimator may ask the CO to request current labor rate information from the contractor.

Work extends beyond a contractor's fiscal year

When the estimated period of performance includes multiple contractor fiscal or rate years, the estimator must ensure the correct rates are applied to each rate period. One pricing approach which may be used in this instance is to develop weighted average rates for the period of performance. In the event out-year rates are required for pricing purposes, the contract or contractor's final cost proposal revisions should provide rates for each contract year.

5.8. Escalation & Inflation

The impact of inflation should be considered when developing the IGCE. The Department of Labor's Consumer Price Index (CPI) provides data and percentage changes for inflation and escalation factors. CPI information is available at <http://www.bls.gov/cpi/>.

When projecting inflation, a review of major cost factors for the specific requirement should be considered. Inflation rates for specific commodities may be much higher or lower than the average and should be factored into the estimate. Market trends should be considered when projecting option year(s) escalation rates and should be justified in a short narrative. A market survey will provide information on current market prices and potential volatility of prices in the market place. In addition, when computing a projected escalation rate, a review of previous Treasury interest rates may provide an overall view of market prices.

Base-Year versus Out-Year Escalation

Develop the base year estimated costs considering the inflation that is necessary to provide a realistic projected price. To forecast the option year(s) cost, the appropriate escalation factors apply to the previous cost elements to compute a realistic value. If the contract performance involves more than one year, different escalation factors may be applied dependent on the labor and material combination.

5.9. Indirect Labor Burden

Once the direct labor pricing has been computed, the estimator applies the applicable indirect labor burden rate(s). For existing contracts, refer to *Section G-Contract Administration Data*, of the contract, for the appropriate allocation bases and indirect rates. If the contract has been in effect for a length of time, the rates may have changed. Therefore, contract modifications with negotiated rate changes should be reviewed. The estimator may also contact FAOSC staff for the latest information on indirect rates for specific contractors.

There are two commonly used direct labor burden rates that may be applied to the total estimated cost for direct labor. These rates are fringe benefits and overhead burden. Depending on their accounting system, contractors may use either or both indirect rates.

Fringe Benefits Burden Rate

Many contractors apply a separate fringe benefits rate to direct labor dollars in order to recover the cost of items such as health insurance and social security. If the cost estimate is for an order under an existing contract, check the contract to ensure it contains a fringe benefits rate. If the contract contains the fringe benefits rate, compute the fringe benefits costs by multiplying the rate times the appropriate allocation base (may be direct labor dollars or total labor dollars). Some contractors apply fringe burden to direct labor hours. In this instance, multiply the fringe burden rate by direct labor hours.

Overhead Burden Rate

Overhead burden represents the cost of maintaining, and managing or supervising, the labor force. If the contractor does not have a separate fringe benefits rate, the costs of health insurance, and annual leave will be a part of the overhead burden rate. The overhead burden pool may consist of rent expense, office furniture costs, clerical support staff, and supervisors and managers who are not directly working on the effort. The overhead pool base may be, but is not limited to: direct labor dollars, direct labor dollars plus applicable fringe benefits, or direct labor hours. To calculate the overhead cost, multiply the overhead rate times the allocation base.

5.10. Travel

Determine whether SOW performance requires the contractor to travel. If travel is required, the IGCE should be specific as to:

- the purpose of the travel and the contractor's role;
- the number of trips;
- the number of persons per trip;
- the beginning and ending destinations and length of time for each trip;
- the estimated car rental versus public transportation;
- the estimated per diems;
- the estimated airfares and/or train fares; and
- the estimated amounts for taxis and other miscellaneous expenses.

The accompanying narrative should include applicable assumptions related to the estimated travel required to perform the SOW. The information obtained from this process will be used to compare the IGCE to the contractor's estimate. The estimator should consult FAR 31.205-46 *Travel Costs* and ensure that proposed travel costs are in accordance with the Federal Travel Regulations and the Joint Travel Regulations.

5.11. Subcontracts, Materials, and Equipment

Subcontracts

The services for subcontractors may include such items as sampling, laboratory analysis, drilling, surveying, security, and printing. Various sources of cost data are available for estimating field or construction related costs (i.e., drilling of monitoring wells). These include cost estimating guides, project experience, and cost estimating software packages.

Materials

Some projects require materials. To price materials, the estimator should consider historical data, market prices, and source vendors, as well as the quantity and quality of materials required. If programs have identified cost pricing indices applicable to materials required for the instant procurement, or have historically experienced delivery or production cycles which impact material pricing, then ground rules and assumptions should be established for the estimated material cost.

Equipment

It is EPA's policy that contractors should provide all resources necessary to perform agency contracts, including equipment. However, in some situations, it may be necessary to provide equipment as Government Furnished Property (GFP) or to permit the contractor to acquire specialized equipment at the Government's expense as Contractor Acquired Property (CAP). In these instances, estimators should review the scope of contract requirements and include quantities and cost for each equipment item. Before requiring and pricing equipment, estimators should consult with the CO and EPA Property Management Officer for assistance including information on lease versus purchase decisions, and applicable deviations from property regulations. The requirements and regulations pertaining to GFP and CAP are found in FAR 45, EPAAR 1545, and EPAAG 45. The requirements and regulations pertaining to equipment lease versus purchase decisions are found in FAR Subpart 7.4 *Equipment Lease or Purchase*.

5.12. Other Direct Costs (ODCs)

Determine the ODCs that will be required for contract performance. Examples of ODCs include the following: postage/shipping, reports, reproduction, overnight delivery service, computer usage rates, and miscellaneous.

The narrative should include all assumptions used in pricing these items. Some points to consider for each of the above items are as follows:

Postage/Shipping

Table 1: Postage/Shipping Cost Calculations

Consider the types of items mailed. For instance, if the contactor mails samples, the estimate for mailing or shipping could be as shown in Table 1. The estimator should always consider the use of EPA mail to save on mailing costs. Although using the contractor for deliveries can be more convenient or expedient, often it is not the best value for the Government.

Situation: 25 Samples Per Month at \$45 each

	\$45
×	25
Total Monthly Shipping Charges	\$1,125

Reports

In order to estimate report costs, review reports EPA received on the current contract or similar contracts. Consider the following: How many are being received? How are they being used? Which reports can be eliminated or the number reduced? Are additional reports required? Which reports can be combined?

Once the number of reports and the estimated number of pages per report has been determined, the estimator can estimate, based on historical data as modified by the estimator's review, the costs per page and compute the total estimate for the IGCE.

Table 2: Report Cost Calculations

Situation: \$3.50/page and the average report is 50 pages and 3 different based on historical info

	\$3.50
×	50
×	3
Total Monthly Report Charges	\$525

Reproduction

Reproduction cost is usually estimated on a per page basis. The rates generally range from \$.05 to \$.15 per page.

(Note: EPAAR 1552.208-70 Printing places restrictions on the amount of printing that may be performed by a contractor.)

Table 3: Reproduction Cost Calculations

Situation: An average of \$.10 and an estimate of 10,000 pages needed based on prior history

	\$.10
×	10,000
Total Monthly Report Charges	\$1,000

Overnight Delivery Service

When monitored closely, cost savings can be realized for overnight delivery services (i.e., FedEx and UPS). Oftentimes, contractors use an overnight delivery service at \$15 or \$20 per trip when an item could be mailed for \$3 or \$4. With the exception of time constraints, items should be mailed instead of using an overnight service. In order to price this element, call multiple overnight delivery services in the area and obtain quotes for deliveries, then project the number of deliveries per month.

Table 4: Overnight Delivery Cost Calculations

Situation: 4 deliveries per month at \$15 per delivery

	\$15
×	4
Total Monthly Report Charges	\$60

Computer Related Costs

Computer related cost is difficult to estimate because the category covers so many cost areas. Computer related cost may include the purchase of personal computers, usage rates for mainframe computers, and other computer related costs. To estimate these costs, identify whether the contract or project requires special software packages. Ask whether the CO has obtained authority for computer software purchases to be priced, as a direct charge (in compliance with FAR and EPAAG). Price computer related costs using any of the ODC pricing methods herein. An experienced computer professional may provide value-added assistance with computer related costs. Additionally, estimators may wish to consult with their Information Management Officer (IMO) or representatives from the Office of Environmental Information (OEI) at Headquarters.

Miscellaneous ODCs

When applicable, the estimator should have specific cost items in mind for miscellaneous ODCs. Contractors include such elements as temporary office help and special licenses in this category. The estimator should always identify the cost elements that define miscellaneous costs for the requirement. The miscellaneous ODC category should not include excessive amounts.

5.13. General and Administrative (G&A)

Once pricing has been completed for direct labor, overhead, travel and ODCs, the applicable G&A rate should be applied. To calculate the G&A cost, multiply the G&A rate times the allocation base (i.e., total cost input or other value-added base).

For existing contracts, check *Section G-Contract Administration Data*, in the contract, for the appropriate allocation bases and indirect rates. If the contract has been in effect for a length of time, the rates may have changed. The CO and the FAOSC staff can provide the latest information on indirect rates for specific contractors.

If an IGCE is being prepared for a new procurement, the estimator may consult program personnel with experience with similar contracts, or a FAOSC staff member to obtain information on G&A rates for contractors who may bid on the procurement. The CO should also be consulted for advice on how to estimate G&A.

5.14. Material Handling, Subcontract Administration, and Other Indirect Factors

Estimates for material handling, subcontract administration, and other indirect factors may be required when the SOW requires significant materials or subcontract expenses. These factors represent the prime contractor's administrative costs associated with the management and logistical support for related line items (i.e., material, subcontract and ODCs). Typically, contractors utilizing these factors segregate the effort for managing these costs from their G&A indirect cost pool. The historical experience of similar programs may be used to price this expense category.

5.15. Profit and Fee

Since an IGCE is an estimate of the total cost to the Government, it should include profit or fee. Profit is associated with fixed price contracts and fee is associated with cost reimbursable contracts. If the IGCE is for a contract already in place, the estimator should review the contract for special fee provisions and apply the negotiated fee percentage to the total estimated costs.

The profit and fee estimate for a new procurement is an area where the CO can be particularly helpful. The CO can either provide a "typical" fee percentage to use or work with the estimator to prepare a fee estimate based on the EPA's Weighted Guidelines for profit and fee described in EPAAR 1515.404. When estimating the fee on an award fee contract, consult the CO.

5.16. IGCE Documentation

Estimates should be documented to show all the parameters, assumptions, descriptions, methods, and calculations used in the development process. Documentation should identify sources for the data, explain why particular methods and data sets were chosen, and why these choices are reasonable. A best practice is to use both a narrative and cost tables to describe the basis for an estimate. Exhibit 5.5 provides a sample best practice checklist that supervisors and approving authorities can use as a tool to ensure IGCEs are appropriately documented. Typically, cost estimate documentation includes, but is not limited to, the following: cover page, summary, estimator/program team, project description, estimating methods, and updates as applicable.

IGCEs should be sent to the CO with the Advanced Procurement Plan (APP) or with the requisition in the EPA Acquisition System (EAS). The documentation should allow any user to trace the data, calculations, modeling assumptions, and rationale back to the source document for verification and validation.

Exhibit 5.5 - Best Practices for Documenting the IGCE

Best Practice Checklist: Documenting the Estimate
<p>The documentation describes the cost estimating process, data sources, and methods so that an individual unfamiliar with the program could understand what was done and replicate it.</p> <ul style="list-style-type: none"> ✓ Supporting data are adequate to easily update the estimate to reflect current costs or program changes and to use for future estimates. ✓ The documentation describes the estimate with narrative and/or cost tables. ✓ It contains a summary, descriptions of the estimating methods, signatures and updates that reflect current costs and program changes. ✓ The documentation is mathematically sensible and logical. ✓ It includes access to an electronic copy (if applicable). ✓ The IGCE is accessible to authorized personnel.
<i>Source: GAO-09-3SP</i>

5.17. Validating the Estimate

Individuals independent of the Program Office should validate that all IGCE cost elements are credible and can be justified by acceptable estimating methods, adequate data, and detailed documentation. A high-quality, reliable cost estimate is well-documented, comprehensive, accurate, and credible. This means that the data can be traced to the source documents, provides enough details, and is unbiased. The validation process should ensure the SOW and IGCE are in accordance with available fund levels. Exhibit 5.6 provides a best practice checklist for validating the cost estimate.

Cost Risk and Uncertainty

As a cost estimate is a forecast; there is always a chance that the actual cost will differ from the estimate. Therefore, the estimator and reviewer should consider whether such uncertainty and cost risk can be managed under program performance. Depending on the conclusion, risk and uncertainty may be priced in the IGCE.

Exhibit 5.6 - Best Practices for Validating the IGCE

Best Practice Checklist: Validating the Estimate	
The cost estimate was validated against four characteristics:	
○ It is comprehensive, includes all possible costs, ensures that no costs were omitted or double counted, and explains and documents key assumptions.	
✓ It completely defines the program, reflects the current schedule, and contains technically reasonable assumptions.	
✓ It captures the complete technical scope of the work to be performed, using a logical WBS that accounts for all performance criteria and requirements.	
○ It was documented so well that it can easily be repeated or updated and traced to original sources by auditing.	
✓ Supporting documentation identifies data sources, justifies all assumptions, and describes all estimating methods (including relationships) for all WBS elements.	
✓ Schedule milestones and deliverables can be traced and are consistent with the documentation.	
○ It is accurate, not too conservative or too optimistic; is based on an assessment of most likely costs, adjusted properly for inflation; and contains few minor mistakes.	
✓ WBS estimates were checked to verify that calculations were accurate and accounted for all costs and that proper escalation factors were used to inflate costs so they were expressed consistently and accurately.	
✓ Questions associated with estimating techniques were answered to determine the estimate's accuracy.	
✓ Cost models were validated to ensure that they were good predictors of costs, their data were current and applied to the program, the relationships between technical parameters were logical and statistically significant, and results were tested with independent data.	
○ Data limitations from uncertainty or bias were identified.	
✓ Risk and uncertainty analysis was conducted.	
<i>Source: GAO-09-3SP</i>	

CHAPTER 6 CONTINUOUS UPDATES

This chapter provides information pertaining to the need to continuously update the IGE.

6.1. Continuous Updates

Developing a cost estimate should not be a one-time event but, rather, a recurring process. Fundamentally, the IGE is considered a “living document”. If changes are necessary based on program events, the IGE should be considered a “database” from which future estimates may be priced. Examples of post-IGE events that may require updating the original IGE include contract requirement changes, market changes, and budget changes.

Furthermore, programs should be monitored continuously for cost control by comparing planned and actual performance against the approved program baseline IGE. In addition, cost estimates should be updated with actual costs so that it is always relevant and current. The continual updating of the IGE as the program matures not only results in higher-quality data, but also provides an opportunity to incorporate significant program events. Future estimates can benefit from the new knowledge. Based upon this comparison, cost or schedule variances resulting from incorrect assumptions should always be thoroughly documented so as not to repeat history, and all historical data should be archived in a database for use in supporting future estimates.

Subsection 7.1.100 – Purchasing Capital Assets and Property (December 2019 Administrative updates only)

This subsection was previously Unit 7.1 of the Acquisition Handbook.

7.1.100.1 Purpose.

This policy distributes and requires compliance with the Office of the Comptroller (OC) Transmittal No. 97-18, dated May 21, 1997, which addresses the purchase of capital assets.

7.1.100.2 Background.

Transmittal No. 97-18, dated May 21, 1997 was coordinated with the Office of Acquisition Management (OAM), now the Office of Acquisition Solutions (OAS) prior to issuance, and is to be implemented within OAS. OAS has been advised by the OC that the Agency continues to experience problems in identifying capital property purchases in Agency automated systems. This problem can only be rectified by strict adherence to this policy.

This policy was originally issued as Procurement Policy Notice (PPN) No. 98-03 on April 9, 1998 from Betty L. Bailey to OAM Division Directors, Regional Contracting Officer Supervisors, and OGC.

7.1.100.3 Authority/Applicability.

The authority for this policy is Office of the Comptroller Transmittal No. 97-18, dated May 21, 1997.

7.1.100.4 Definitions [Reserved].

7.1.100.5 Policy.

In order to enable the Comptroller to collect data necessary for mandatory Agency reporting under the Chief Financial Officer (CFO) Act, and due to the parameters of EPA's automated financial accounting system, all personnel involved in the procurement of capital property are required to comply with the procedures set forth in the OC Transmittal No. 97-18 (Appendix 7.1.100-A). Each item of capital property purchased must appear as a separate line item in the purchase document, and each item must be identified by a specific and separate document control number (DCN), and a sub-object class code, (also referred to as the "budget" code). The program office is responsible for assigning these numbers, but it is the contracting officer's (CO) responsibility to verify that the proper information has been provided in the purchase request, and to include the correct information in the procurement instrument.

Specifically, the OAS Purchasing Official responsibilities are set forth in Attachment 7.1.100-A-1 (III C), and include:

- (a) Ensuring that the accounting lines (including DCN, object class, and costs) are clearly identified with their respective capitalized item on the purchasing documents.
- (b) Forwarding to the appropriate Property Management Officer (PMO) the receiving report copy of the executed purchase document.

The Comptroller's transmittal contains samples of properly completed purchase documents, as well as guidance for determining the difference between capital and expense purchases, and a chart of sub-object class codes.

APPENDIX 7.1.100-A

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, FINANCIAL
MANAGEMENT DIVISION
OFFICE OF THE COMPTROLLER, TRANSMITTAL 97-18**

May 19, 1997

MEMORANDUM

SUBJECT: Purchasing Capital Assets

FROM: Jack Shipley, Director /s/
Financial Management Division (2733F)

Financial Management Officers

This Transmittal Notice (TN) provides interim instructions for preparing the financial components of purchasing documents, such as procurement requests and purchase orders, for capital assets. It also provides guidance on how to distinguish capital assets from other property.

Everyone involved in the acquisition process must follow the attached instructions to ensure that capital assets are uniquely identified within the Agency's Fixed Asset Subsystem (FAS). FAS is a module of the EPA Integrated Financial Management System (IFMS). FAS will enable EPA to comply with new accounting and reporting standards issued by the Federal Accounting Standards Advisory Board (FASAB).

Although FAS will not be fully operational until June 1997, ordering and purchasing offices must begin using these instructions for any capital property purchases they initiate on or after the date of this TN. Please distribute this Notice promptly to ordering and purchasing offices within your servicing areas.

We do want to provide you with an opportunity to comment on these interim procedures before we issue them in final. If you have any comments, please provide them to us no later than May 31, 1997. It's always helpful when comments include suggested alternative wording to address any concerns you raise.

Please forward any comments to Pam Doucure of the Financial Policies, Procedures and Compliance Branch (E-mail Doucure-Pamela). If you have questions or need additional information, please contact Pam at (202) 260-2932.

cc: Director, Annual Planning and Budget Division
Director, Financial Services Division

Director, Office of Administration
Director, Office of Acquisition Management
Director, Office of Grants and Debarment
Director, Facilities Management and Services Division Senior Resource Officials
Senior Budget Officers
Regional Comptrollers
FMD Branch Chiefs

ATTACHMENT 7.1.100-A-1**INTERIM PROCEDURES ON PURCHASING CAPITAL ASSETS**

The following procedures set forth requirements for the proper accounting of capital asset purchases.

I) BACKGROUND

The Office of the Comptroller has issued a number of PAs to implement recent Federal Accounting Standards Advisory Board (FASAB) and Office of Management and Budget (OMB) accounting requirements for property. Comptroller PA 96-03 established a higher capitalization threshold for property, plant and equipment (PP&E) and described how different categories of PP&E were affected by the change. PAs 97-01 and 97-02 provided additional information on, respectively, Capital Leases and Capitalized Software.

Further, the Agency will shortly begin using the Fixed Asset Subsystem (FAS) as part of the EPA Integrated Financial Management System (IFMS). FAS will replace the Personal Property and Accountability System (PPAS) and will correct the longstanding problem of reconciling capital property records with the financial records. FAS will automatically record capital purchases both to the fixed asset records and to the appropriate general ledger accounts.

These procedures set forth the accounting code requirements necessary to distinguish each item of capital property and thus enable the FAS: (1) to properly account for and track these items from commitment through ultimate disposal and (2) to comply with the FASAB and OMB requirements. (The Agency purchases approximately 250 items of capital property each year, and thus only a very small percentage of Agency procurement actions are affected by this policy and procedure change.)

II) REQUIREMENT

When Agency staff initiate actions to procure capital items or prepare purchase documents, each capital item must be assigned its own unique document control number (DCN) and the appropriate budget sub-object class for that type of purchase, along with the other standard accounting data necessary for the procurement action.

Items that do not fall within the definition of capitalized property (i.e., an expense item) may be grouped together in a procurement action and assigned a single DCN and line of accounting or, in the case of split funding, a set of accounting lines applicable to the entire group of items.

Capitalized and non-capitalized items may be included on the same Procurement Request or other purchasing documents as long as each item of capitalized property included on the document

is clearly assigned its own unique DCN, etc., as described above.

III) ROLES AND RESPONSIBILITIES

A) Agency Ordering Officials (Agency employees who order goods and services) and/or Funds Control Officers will establish separate accounting line(s) (i.e., DCN, fund codes, estimated cost, object class, and etc.) for each capital property item on a procurement request (PR). This includes identical items. (See examples provided in Figures A-1, 2, 3 and 4). Estimated costs will include the cost of the initial complement of the property, the cost of component parts (i.e., upgrades) and other incidental costs such as:

- transportation charges to the point of initial use;
- handling;
- storage costs;
- installation costs;
- damage claims; and
- duties.

These officials must ensure that the correct budget object class code(s) is reflected on purchase documents. Attachment C provides budget sub-object class codes EPA uses for capital property purchases. (The complete set of Agency budget sub-object classes is found in Resource Management Directives System (RMDS) 2590.)

Once appropriate management approvals are obtained, and the PR is committed in IFMS, the originating office forwards the PR to the respective Property Management Officer (PMO).

B) Property Management Officers (PMOs) will review capital property PRs to determine if the property requested is available in EPA's inventory:

1. If so, the PMO will return the PR to the originating office along with a property transfer document that transfers the requested item from EPA inventory.
2. If not, the PMO will forward the PR to the appropriate Agency purchasing official.

C) Agency Purchasing Officials will:

1. Ensure that accounting lines (including DCN, object class, and costs) are clearly identified with their respective capitalized item on purchasing documents.
2. Forward to the appropriate PMO the receiving report copy of executed purchase documents.

IV) EXPENSE ITEMS

Items such as accountable property that do not meet the Agency's capitalization criteria, maintenance contracts and supplies (i.e., paper, ribbons and, floppy disks) used in daily operations are expense items and may be grouped under one accounting line (See Figure A-1) on procurement and purchase documents. The accounting lines for these items shall reflect an expense budget sub-object code.

FIGURES

Figure A-1 EPA Form 1900-8, Procurement Request/Order, for One Capital Property and Two Expense Items.

Figure A-2 EPA Form 1900-8 for One Split-funded Capital Property Item.

Figure A-3 EPA Form 1900-8 for Two Capital Property Items.

ATTACHMENT 7.1.100-A-2

**GUIDELINES FOR DISTINGUISHING CAPITAL PURCHASES
FROM EXPENSE PURCHASES**

- I) **INTRODUCTION.** This attachment provides guidelines on how to distinguish a capital purchase from an expense item. Generally, three factors must be considered in determining whether an action should be classified as a capital purchase or expense item: (1) the nature of the item to be purchased or constructed (e.g., supplies versus equipment), (2) the service life and (3) cost of the item purchased or constructed and the specific guidance provided below:
- II) **CAPITAL PROPERTY.** The various types of properties that generally meet the Agency's capitalization criteria are as follows:
- A) Capital Land includes land and land rights costing \$75,000 or more.
 - B) Improvements to Land include items such as bridges roads, sidewalks, parking lots, tennis courts and airports costing \$75,000 or more.
 - C) Capital Real Property consists of structures costing \$75,000 or more with a service life of two years or more with the following general characteristics:
 - 1) Buildings such as structures and improvements to structures that extend their useful lives, additions or improvements to structures (but not normal maintenance and alterations that do not result in a permanent change);
 - 2) Utility Structures such as water and sewage systems; heating, cooling and power systems; communication systems; and fire prevention systems; and
 - 3) Construction in Progress includes all supplies and contractor costs associated with construction projects prior to occupying or use of property such as architectural engineering, excavation, filling and landscaping and other site preparation costs.
 - D) Furniture and Fixtures include individual items that cost \$25,000 or more with a service life of two years or more such as antique furniture and filing systems

E) Data Processing Software includes off-the-shelf software and custom software developed by contractors and used by Agency revenue generating activities (i.e., the Working Capital Fund) that cost \$100,000 or more with a useful life of two years or more. Refer to Comptroller Policy Announcement 97-02 for details on capital software.

F) Equipment includes items that cost \$25,000 or more with a service life of two years or more such as:

- 1) Heavy Equipment includes vehicles, processing or manufacturing machinery and shop machinery.
- 2) Special Equipment includes medical, laboratory, and security equipment.
- 3) Automated Data Processing Equipment includes mini or mainframe computers and interface peripherals.

G) Capital Leases include leases that cost \$75,000 or more and a lease term of two years or more. Refer to Comptroller Policy Announcement No. 97-01 for more detailed guidance on capital leases.

H) Betterments include costs of \$25,000 or more for personal property and \$75,000 or more for real property that result in enlarging and/or extending the useful life of capital property.

III) EXPENSE ITEMS. Accountable property that does not meet capitalization dollar thresholds described in paragraph II above will be identified in procurement requests and purchase documents via expense budget sub-object class codes. The following also provides examples of property or related property costs that are expensed regardless of cost:

A) Land. Normal maintenance and repair, such as periodic vegetation control, repair to sections of sidewalks and roads.

Real Property.

1. Buildings. Normal maintenance and repair (e.g., painting and cleaning), small repair jobs, and alterations that do not result in a permanent change and/or a decrease or addition of space (i.e., moving walls).
2. Construction. Demonstration plants or building constructions that have limited service lives and that will not be used for actual production or operations.
3. Utilities. Monthly fees for water, sewage, heating, electrical and telecommunication services.

C) Equipment.

1. Repairs and maintenance costs which are incurred to keep equipment in operable condition.
2. Conceptual designs, fabrication testing, reworks of prototype equipment subject to redesign.

D) Research and Development. Costs incurred by research and development (R&D) prototypes that are related to the search for knowledge and have no alternate future use.

E) Betterments. Items added in or to capital property that do not:

1. Meet the Agency's capitalization criteria;
2. Enlarge it;
3. Change its functional purpose (i.e., office building converted to a laboratory); and/or
4. Extend its useful life.

APPENDIX 7.1.100-B

CAPITAL PROPERTY BUDGET SUB-OBJECT CLASS CODES

31.00

EQUIPMENT: Comprises personal property of a more or less durable nature - that is, which may be expected to have a period of service of one year or more after put into use without material impairment of its physical condition. It includes charges for service in connection with initial installation or reinstallation of equipment when performed under contract. It excludes commodities which are converted in the process of construction or manufacture, or which are used to form a minor part of equipment or fixed property.

TRANSPORTATION EQUIPMENT. Vehicles, including passenger-carrying automobiles, motor trucks, motorcycles, tractors, aircraft, wagons, carts, vessels, steamships, barges, and power launches.

FURNITURE AND FURNISHINGS. Movable furniture, fittings, and household equipment, including desks, tables, chairs, typewriters, adding and bookkeeping machines, hospital and household equipment.

BOOKS Rare books for permanent collections.

IMPLEMENTS AND TOOLS.

MACHINERY - Engines, generators, manufacturing machinery, transformers, ship equipment, pumps, and other production and construction machinery.

INSTRUMENTS AND APPARATUS - Surgical instruments, X-ray apparatus, signaling and telephone and telegraph equipment, electronic equipment, scientific instruments and appliances, measuring and weighing instruments and accessories, photographic equipment, picture projection equipment and accessories, and mechanical drafting devices.

31.30 Administrative - Capital Equipment \$25,000 or more. Comprises personal property of a more or less durable nature which has a period of service of two years or more after put into use without material impairment of its physical condition. It includes charges for service in connection with initial installation or reinstallation of equipment when performed under contract. The monetary value of \$25,000 is based on individual items.

31.31 Programmatic - Capital Scientific & Technical Equipment \$25,000 or more. Scientific and Technical equipment including purchases of laboratory and scientific equipment, measuring and weighing instruments and accessories, mechanical drafting devices. Replacement of in-house Scientific & Technical equipment. The monetary value of \$25,000 is based on individual items.

31.33 Administrative - Capital ADP Equipment \$25,000 or more. Purchase of computer systems and related equipment (to support administrative functions) regardless of capacity or cost. Computer systems and equipment include CPUs and all peripheral items such as printers, monitors, tape and disk controllers and drives, optical disk drives, terminals, plotters, busters, decollators, other input/output devices, maintenance and test equipment, etc. The monetary value of \$25,000 is based on individual items.

31.34 Programmatic - Capital ADP Equipment \$25,000 or more Purchase of computer systems and related equipment (for programmatic functions only) regardless of capacity or cost. Computer systems and equipment include CPUs and all peripheral items such as printers, monitors, tape and disk controllers and drives, optical disk drives, terminals, plotters, busters, decollators, other input/output devices, maintenance and test equipment, etc. The monetary value of \$25,000 is based on individual items.

31.35 Administrative - Capital Telecommunications Equipment - Voice \$25,000 or more. Purchases of general purpose equipment for staff related to voice telecommunications hardware such as voice telephones (including car phones, cellular phones and beepers), private branch exchanges (PBXs), Messaging devices, etc. The monetary value of \$25,000 is based on individual items.

31.36 Programmatic - Capital Telecommunications Equipment - Voice \$25,000 or more. Purchases of equipment (for programmatic functions only, such as program hotlines) related to voice telecommunications hardware such as voice telephones, private branch exchanges (PBXs), Messaging devices, etc. The monetary value of \$25,000 is based on individual items.

31.37 Administrative - Capital Telecommunications Equipment -Data \$25,000 or more. Purchases of equipment to support administrative functions related to data telecommunications hardware such as data telephones, data switches, modems, multiplexors, controllers, MAUs, etc.; includes purchases of facsimile machines and word processing equipment. The monetary value of \$25,000 is based on individual items.

31.38 Programmatic - Capital Telecommunications Equipment - Data \$25,000 or more. Purchases of equipment (for programmatic functions only) related to data telecommunications hardware such as data telephones, data switches, modems, multiplexors, controllers, MAUs, etc. The monetary value of \$25,000 is based on individual items.

31.39 Administrative - Capital Leases for Personal Property \$75,000 or more. Lease acquisitions for personal property with an asset value of \$75,000 or more and with a lease term of two years or more. This includes, but is not limited to lease acquisitions involving automated data processing (ADP) equipment, office equipment and motor vehicles (If an operating lease, it should be charged to the 2300 series).

31.40 Programmatic - Capital Leases for Personal Property \$75,000 or more. Lease acquisitions for personal property with an asset value of \$75,000 or more and with a lease term of two years or more. This includes, but is not limited to lease acquisitions involving automated data processing (ADP) equipment, office equipment and motor vehicles (If an operating lease, it should be charged to the 2300 series).

31.41 Administrative - Capital Leases for ADP Equipment. Lease acquisitions of computer systems and related equipment (for administrative functions only) regardless of capacity or cost with a lease

term of two years or more and a fair value of \$75,000 or more. Computer systems and equipment include CPUs and all peripheral items such as printers, monitors, tape and disk controllers and drives, optical disk drives, terminals, plotters, busters, decollators, other input/output devices, maintenance and test equipment, etc. The monetary value of \$75,000 is based on individual items. (If an operating lease, it should be charged to the 2300 series).

31.42 Programmatic - Capital Leases for ADP Equipment. Lease acquisitions of computer systems and related equipment (for programmatic functions only) regardless of capacity or cost with a lease term of two years or more and a fair value of \$75,000 or more. Computer systems and equipment include CPUs and all peripheral items such as printers, monitors, tape and disk controllers and drives, optical disk drives, terminals, plotters, busters, decollators, other input/output devices, maintenance and test equipment, etc. The monetary value of \$75,000 is based on individual items. (If an operating lease, it should be charged to the 2300 series).

31.52 Administrative - Capital Leasehold Improvements. Improvements to leased personal property (for administrative functions only) that cost \$75,000 or more.

31.53 Programmatic - Capital Leasehold Improvements. Improvements to leased personal property (for programmatic functions only) that cost \$25,000 or more.

31.54 Administrative - Construction in Progress - Capital Personal Property. Projects costing \$25,000 or more involving the construction, fabrication, or adding a new component to personal property prior to placing it into service.

31.55 Programmatic - Administrative - Construction in Progress - Capital Personal Property. Projects costing \$25,000 or more involving the construction, fabrication, or adding a new component to personal property prior to placing it into service.

31.60 Working Capital Fund Capital Software. Software packages costing \$100,000 or more with a useful life of 2 years or more and the costs are intended to be recovered through the Agency's Working Capital Fund.

31.61 Working Capital Fund Capital Software Construction in Progress. Development costs of \$100,000 or more for software packages with a useful life of 2 years or more and the costs are intended to be recovered through the Agency's Working Capital Fund.

31.62 Programmatic Construction-in-Process - Capital Software. Software projects costing \$100,000 or more involving the development, fabrication, or enhancing an existing software package.

32.00 LAND AND STRUCTURES:

TO BE USED ONLY IN CONJUNCTION WITH THE BUILDINGS AND FACILITIES APPROPRIATION.

Comprises land and interest in land, buildings and other structures, additions to buildings, nonstructural improvements, and fixed equipment (whether an addition or replacement), when

acquired through purchase. Repairs and Improvements under \$75,000, funded by appropriations other than B&F (as authorized by Congressional Appropriations language) must be charged to sub-object classes 25.25, 25.67, 25.69, or 25.70, as appropriate.

TO BE USED ONLY IN CONJUNCTION WITH THE BUILDINGS AND FACILITIES APPROPRIATION.

32.10 Capital Land & Land Rights \$75,000 or more. Land, interest in land, easements, and rights of way.

32.11 Real Property Capital Leases. Lease acquisitions for real property costing \$75,000 or more. This includes, but is not limited to, lease acquisitions with a lease term of two years or more involving buildings, facilities, or land (If an operating lease, charge to the 2300 series.)

32.12 Capital Buildings and Other Structures. The acquisition or construction of buildings and structures, and additions costing \$75,000 or more thereto, when acquired under contract. This includes fixtures and equipment which became permanently attached to or a part of buildings or structures such as elevators, plumbing, power-plant boilers, fire alarm systems, lighting or heating systems, and air conditioning or refrigerating systems (whether an addition or a replacement), when acquired under contract. This also includes charges for services in connection with initial installations or reinstallations of fixed equipment when performed under contract.

32.13 Capital Land Improvements. Improvements of land, such as landscaping, fences, sewers, wells, reservoirs, costing \$75,000 or more.

32.14 Capital Leasehold Improvements. The cost of improvements to leased real property (including such improvements as carpeting, space partitions, soundproofing of ceilings or walls, and alterations) which have a cost of \$75,000 or more.

32.15 Construction in Progress - Capital Real Property. Projects costing \$75,000 or more involving the construction, fabrication, or adding of a new component to real property prior to placing it into service.

32.16 Land & Land Rights less than \$75,000. Land, interest in land, easements, and rights of way.

ATTACHMENT 7.1.100-B-1

TABLE OF STANDARD SERVICE LIVES

Master Id Code (MIC)	Description	Standard Service Life
1000	Weapons	0
1100	Nuclear Ordnance	0
1200	Fire Control Equipment	25
1300	Ammunition and Explosives	0
1400	Guided Missiles	0
1500	Aircraft and Airframe Structural Components	12
1600	Aircraft Components and Accessories	12
1700	Aircraft Launching, Landing, and Ground Handling Equipment	12
1800	Space Vehicles	0
1900	Ships, Small Craft, Pontoons, and Floating Docks	10
2000	Ship and Marine Equipment	10
2200	Railway Equipment	25
2300	Ground Effect Vehicles, Trailers, and Cycles:	
2301	Ambulances	10
2302	Buses	9
2303	Cars, armored	10
2304	Jeeps	5
2305	Sedans	5
2306	Scooters	5
2307	Station wagons	5
2308	Trailers, automotive (all types)	6
	Trucks (all types):	
2309	Heavy	6
2310	Light	4
2400	Tractors	4
2500	Vehicular Equipment Components	5
2600	Tires and Tubes	1
2800	Engines, Turbines, and Components	5
2900	Engine Accessories	5
3000	Mechanical Power Transmission Equipment	5
3100	Bearings	5
3200	Woodworking Machinery and Equipment	10
3400	Metalworking Machinery	14
3500	Service and Trade Equipment	9

3600	Special Industry Machinery	12
3700	Agricultural Machinery and Equipment	10
3800	Construction, Mining, Excavating and Hwy. Maintenance Equipment	6
3900	Materials Handling Equipment	5
4000	Rope, Cable, Chain, and Fittings	1
4100	Refrigeration, Air Conditioning, and Air Circulating Equipment:	
4101	Refrigeration System	5
4102	Refrigerator	5
4103	Air-conditioning System	5
4200	Fire Fighting, Rescue, and Safety Equipment	12
4300	Pumps and Compressors:	
	Compressors	5
	Pump:	
4301	Water	10
4302	Other	5
4400	Furnace, Steam Plant, Drying Equipment; and Nuclear Reactors	20
4500	Plumbing, Heating, and Sanitation Equipment	30
4600	Water Purification and Sewage Treatment Equipment	24
4700	Pipe, Tubing, Hose, and Fittings	25
4800	Valves	25
4900	Maintenance and Repair Shop Equipment	10
5100	Hand Tools	2
5200	Measuring Tools	2
5300	Hardware and Abrasives	1
5400	Prefabricated Structures and Scaffolding	20
5500	Lumber, Millwork, Plywood, and Veneer	0
5600	Construction and Building Materials	0
5800	Communication, Detection, and Coherent Equipment	10
5900	Electrical and Electronic Equipment Components	15
6000	Fiber Optics Material, Components, Assemblies, and Access	15
6100	Electrical Wire, and Power and Distribution Equipment	22
6200	Internal Lighting Fixtures and Lamps	15
6300	Alarm, Signal, and Security Detection Systems	15
6500	Medical, Dental, and Veterinary Equipment and Supplies:	
6501	Medical, Dental, and Veterinary Equipment	15
6502	Medical, Dental, and Veterinary Supplies	0

6600	Instruments and Laboratory Equipment	15
6700	Photographic Equipment	10
6800	Chemicals and Chemical Products	0
6900	Training Aids and Devices	2
7000	General Purpose Automatic Data Processing Equipment	5
7100	Furniture	15
7200	Household and Commercial Furnishings and Appliances	10
7300	Food Preparation and Serving Equipment	10
7400	Office Machines, Test Process, Systems, and Visible Record Equipment	5
7500	Office Supplies and Devices (i.e., staplers)	0
7600	Books, Maps, and Other Publications	1
7700	Musical Instruments, Phonographs, and Home-Type Radios	15
7800	Recreational and Athletic Equipment	10
7900	Cleaning Equipment and Supplies:	
7901	Cleaning Equipment	5
7901	Cleaning Equipment Supplies	0
8000	Brushes, Paints, Sealers, and Adhesives	0
8100	Containers, Packaging, and Packing Supplies	0
8300	Textiles, Leather, Furs, Apparel, Shoe Findings, Tents, Flags	2
8400	Clothing, Individual Equipment, and Insignia	2
8500	Toiletries	0
8700	Agricultural Supplies	0
8800	Live Animals	6
8900	Subsistence	0
9100	Fuels, Lubricants, Oils and Waxes	0
9300	Nonmetallic Fabricated Materials	0
9400	Nonmetallic Crude Materials	0
9500	Metal Bars, Sheets, and Shapes	0
9600	Ores, Minerals, and Their Primary Products	0
01000	Working Capital Fund Software	5
02000	Buildings:	
02100	Temporary, light wood frame, plywood, sheet metal	10
02200	Prefabricated	20
02300	Wood framing. exterior wall covered with work siding, and shingles	30
02400	Light steel structures with finished	

	interiors	30
02500	Masonry exterior walls, wood interior framing or steel frame with metal panel walls, corrugated sheet metal siding and roofing	40
02600	Masonry exterior walls, concrete or steel frame	50
03000	Land (Nondepreciable)	0
04000	Improvements to Land:	
04100	Asphalt, roads, walks, and paved areas	20
04110	Concrete roads, walks, and paved areas	30
04120	Gravel and stone roads, walks, and paved areas	15
04200	Chain link fences	25
04210	Wire fences	15
04220	Wood fences	15
04300	Concrete bridges	50
04310	Steel bridges	35
04320	Wood bridges	20
04330	Dam	100
04400	Septic Tanks	35
04410	Water Pumps	20
04510	Outdoor recreational facilities	20
04600	Concrete retaining walls	40
04610	Timber retaining walls	20

CHAPTER 8 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

Section 8.4 – Federal Supply Schedules

Subsection 8.4.1 - Federal Supply Schedules (January 2020)

This subsection was previously section 8.1 of the Contracts Management Manual.

8.4.1.1 Purpose.

The purpose of this subsection is to establish Agency procedures for acquiring supplies or services under General Services Administration (GSA) non-mandatory Federal Supply Schedule (FSS) contracts.

8.4.1.2 Background.

GSA directs and manages the FSS Program, which provides agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying.

8.4.1.3 Authority/Applicability.

The authority for this subsection is the [Federal Acquisition Regulation \(FAR\) Part 38](#), which covers FSS Contracting, [FAR Subpart 8.4](#), FAR 17.5 and EPAAG 17.5.1, which contains the policies and procedures for obtaining supplies and services under FSS.

This subsection applies to all contracting officers (CO) and program office users of FSS contracts.

8.4.1.4 Policy.

(a) Orders issued Against GSA FSS Contracts.

(1) Interagency Acquisitions: See EPAAG 17.5.1 for additional information regarding issuing orders against GSA FSS contracts.

(2) Small Business Set Asides: Although the mandatory preference programs of [FAR Part 19](#) do not apply to FSS orders, COs are encouraged to set aside orders and Blanket Purchase Agreements (BPAs) for small business concerns when appropriate. (See [FAR 8.405-5\(a\)](#))

(3) GSA Special Ordering Procedures: GSA may establish special ordering procedures applicable to one or more schedules. However, if special ordering procedures conflict with Agency policy, the schedule should not be used.

(4) Clauses and Provisions: All FSS orders and BPAs shall include appropriate and pertinent EPA clauses or requirements. Agency specific clauses may include, but are not limited to, the following EPA clauses: Conflict of) Interests ([EPA Acquisition Regulation \(EPAAR\) 1552.209-70, 71, 72, and 73](#)) and Compliance with EPA Policies for Information Resources Management ([EPAAR 1552.211-79](#)). If an

FSS contract does not permit the addition of clauses or provisions in orders or BPAs, a different contract vehicle must be used.

(5) FAR Part 8 vs. FAR Part 15 Procedures: Generally, [FAR Part 8](#) awards are simplified/streamlined. As such, awards against GSA schedules should be made without entering into negotiations (FAR Part 15) with offerors. [FAR Part 8](#) encourages use of best value principles in making an award. Caution should be used to ensure that terminology from [FAR Part 15](#) is not used.

(6) Price Reductions: If an order or BPA exceeds the Simplified Acquisition Threshold (SAT), the CO is required to seek price reductions from the published price. If an order is below the SAT, COs are not required, but are encouraged to also seek price reductions. (See [FAR 8.405-4](#))

(7) Review Thresholds: All EPA required reviews, concurrences, and approvals apply to FSS orders and BPAs (See [EPAAG Chapter 1.6.1](#)).

(8) Obtaining the Schedule: Prior to award of an FSS order, the CO shall obtain a copy of the signed FSS contract under which the order will be issued from the FSS vendor. This may be an electronic copy and should become part of the contract file.

(9) Limited Source Justifications: Agency approval levels apply to FSS orders and BPAs and approval levels for limited source justifications may be found in the EPAAG 1.6.1-A, block 8, *Justifications that Limit Competition*. (Also see [FAR 8.405-6\(d\)](#))

Please note that if the justification is for a sole source bridge vehicle, as defined under EPAAG 6.3.1.4, then the justification must clearly be identified as a "bridge" justification, and contain the additional information required under EPAAG 6.3.1.5.2(i) through (v), as applicable. The bridge justification must be approved in accordance with the *Bridge Justifications that Limit Competition* approval authorities contained in EPAAG 1.6.1-A, block 8.

Subsection 8.0.100 – Mandatory Requirements for Use of Common Contract Solutions (September 2019)

8.0.100.1 Purpose.

The purpose of this subsection is to provide Agency policy regarding the required use of Common Contract Solutions (formerly titled “Requirements for Use of Strategic Sourced Solutions”). Common Contract Solutions include both EPA and Government-wide designated solutions and are in addition to those listed at Federal Acquisition Regulation (FAR) 8.002 - Priorities for Use of Mandatory Government Sources and 8.003 - Use of Other Mandatory Sources.

8.0.100.2 Background.

Per the Office of Management and Budget’s (OMB’s) directions, the Federal Government is moving toward Government-wide mandatory use of common contract solutions to leverage its buying power effectively and efficiency as a single enterprise with requirements for supplies and services. EPA is contributing to the effort by requiring the use of EPA and federal strategic sourcing vehicles, and Best In Class (BIC) solutions.

Government-wide mandatory use contracting reduces total cost of ownership, generates supply chain savings, improves supplier and operational performance, and eliminates contract redundancies. The broad framework of Category Management provides a pathway for agencies to increase their use of common contract solutions, including strategic sourcing and BIC mandatory solutions.

8.0.100.3 Authority/Applicability.

This policy is issued in accordance with FAR 1.301(a) and EPA Delegations Manual Chapter 1-2, the [OMB memorandum M-19-13 dated March 20, 2019 *Category Management: Making Smarter Use of Common Contract Solutions and Practices*](#) and the [Deputy Administrator’s memorandum dated May 23, 2013, *Implementing Strategic Sourcing at the U.S. Environmental Protection Agency*](#).

8.0.100.4 Definitions.

[*Best-in-class \(BIC\)*](#) - a government-wide designation for acquisition solutions that can be used by multiple agencies and that satisfy key criteria defined by the White House Office of Management and Budget (OMB). BIC solutions meet the following criteria, as defined by OMB: rigorous requirements definitions and planning processes; appropriate pricing strategies; data-driven strategies to change buying and consumption behavior (i.e., demand management); category and performance management strategies; and independently validated reviews.

[*Category management*](#) - a strategic business practice that the Federal government is implementing to buy smarter and more like a single enterprise with the goals of government-wide category management to deliver more savings, value, and efficiency for Federal agencies;

eliminate unnecessary contract redundancies; and meet the government's small business goals.

Common Contract Solution – any of the required EPA Enterprise-wide solutions and Federal Strategic Sourced Initiative (FSSI) solutions (e.g. office supplies, delivery services, etc.),

Office of Federal Procurement Policy - The Office of Federal Procurement Policy (OFPP) within OMB plays a central role in shaping the policies and practices federal agencies use to acquire the goods and services they need to carry out their responsibilities. OFPP provides overall direction for government-wide procurement policies, regulations and procedures as well as promotes economy, efficiency, and effectiveness in acquisition processes.

Solution – A solution can be anything from a contract vehicle, such as a Blanket Purchase Agreement (BPA) or Governmentwide Acquisition Contract (GWAC), to other offerings or approaches such as shared services, government-rate tenders, or licensing agreements.

[*Solutions Finder*](#) – An online tool to identify available Federal and EPA-specific contracts. Solutions from all agencies available for use by any federal agency can also be found here. The Solutions Finder also allows for side-by-side comparisons of a number of possible solutions. To learn more, visit: [Tutorials](#).

Spend under management (SUM) – the percentage of an organization's spend that is actively managed according to category management principles—or smart decision-making where agencies buy the same kinds of goods and services through best value solutions.

[*Strategic sourcing*](#) - the collaborative and structured process of critically analyzing an organization's spending at the enterprise level and using this information to make business decisions about acquiring supplies and services more effectively and efficiently.

Total cost of ownership - the total cost to the government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired over the lifetime of the item.

8.0.100.5 Policy.

(a) Policy.

(1) Common Contract Solutions.

(i) Common contract solutions must have the highest priority for use once the EPA employee verifies that the mandatory sources in FAR 8.002 and 8.003 cannot satisfy the requirement. The EPA ordering official must review the current available solutions at the [EPA Strategic Sourcing](#) website to determine if the requirement is covered by any Common Contract Solution. If a Common Contract Solution is not found, the EPA ordering official must then check the [Solutions Finder](#). Common Contract Solutions include, but not necessarily in prioritized order:

- EPA Enterprise-wide solutions;
- Government-wide federal strategic sourcing solutions;
- Best-In-Class solutions; and
- other OMB-designated Category solutions.

(ii) The EPA ordering official must select the Common Contract Solution that offers the greatest benefit to the Agency, including consideration of the Agency's small business goals, that is, preference should be given to a small business if the other requirements are met. New requirements must not be procured through a separate open market contract action if they are available through a Common Contract Solution already in place. If a requirement is essentially the same in fit, form and function as offered by a Common Contract Solution, then that solution (EPA or federal) must be used unless an exception noted in (b) of this section applies or a waiver is obtained (See section 8.0.100.6).

(iii) Use of Government-wide Common Contract Solutions Package Delivery Services.

(A) Only standard ground delivery is authorized for domestic delivery services, unless an extenuating circumstance exists.

(B) Overnight or similar express shipping is authorized when the Contracting Officer (CO)/Simplified Acquisition Contracting Officer (SACO)/Purchase Card Holder (CH), with input from the program office, determines an extenuating circumstance exists. Extenuating circumstances exist when standard ground delivery would negatively impact EPA's scientific, research, legal or program management efforts. However, poor planning is not considered an extenuating circumstance. The CO/SACO/CH may be held responsible for reimbursement costs if it is determined at any time, through audit or other means, that fraud, waste, and/or abuse has occurred in the use of overnight or similar express shipping.

(C) The justification for use of overnight or similar express shipping must be documented in the contract file by the CO/SACO. For purchase card transactions, this justification must be noted in the transaction record by the CH.

(iv) EPA Enterprise-wide Solutions

(A) There are three categories of EPA Enterprise-wide solutions;

- (1) *Enterprise-wide* - Solutions which support an agency-wide need for goods and/or services (e.g., IT contracts managed via Working Capital Fund);
- (2) *Program-based* – Solutions which support a need for goods and/or services under the auspices of a National Program Manager (NPM) or Regional office (e.g., Watershed Protection contract within OW); and
- (3) *Location-based* - Solutions which support a need for goods and/or services for a specific location in its entirety (e.g., Facility contracts for Regional locations).

(B) All three categories of solutions can be found at: [EPA Strategic Sourcing](#).

(2) This policy is applicable to all purchases regardless of the dollar value.

(b) Exceptions.

(1) Priorities for use of Common Contract Solutions must be followed, unless one of the following exceptions applies:

- (i) The requirement is in support of an emergency operation, national security, and/or of unusual and compelling urgency (though a Common Contract Solution may often provide the most expeditious solution);
- (ii) Other sources are required by statute or specified by regulation including the FAR;

If an exception applies, no waiver is required. However, the CO must provide a copy of the documented exception with justification to the Category Management Branch Chief and the CO must document the contract file as to the exception and justification for its use. Exceptions citing unusual or compelling urgency must include the justification for how the Government would have been seriously injured, financially or otherwise, had the EPA procured the goods or services from a Common Contract Solution. CH/SACO/CHs must also demonstrate that the unusual and compelling urgency did not result from a lack of planning or concerns related to funds expiration.

(2) If none of the exceptions in (i) – (ii) above apply, but the CH/SACO/CH still determines that a Common Contract Solution is not the best method for meeting the requirement, a waiver request must be completed, submitted, and approved.

- (i) If the requirement is valued at \$100,000 or less, the waiver must be approved by the Category Management Branch Chief.
- (ii) If the requirement is valued more than \$100,000, the waiver must be approved by the EPA Senior Procurement Executive (SPE) through the Category Management Branch Chief.

Waivers must be approved prior to establishing a contract or using a solution other than those identified on the [EPA Strategic Sourcing](#) website and at the [Acquisition Gateway](#).

The waiver request is a written determination prepared by the CO that thoroughly documents the business case with the supporting justification for not using an available Common Contract Solution. The justification must include an explanation for the need to follow an alternate acquisition strategy, as well as a brief analysis of the value (price and non-price factors (e.g., delivery method, availability, country of origin, etc.) of the required Common Contract Solution not selected in comparison to the intended procurement vehicle. The waiver justification must also be documented in the Advanced Procurement Plan and in the market research.

For purchase card acquisitions, a waiver is still required. Generally, the procedure for requesting a waiver are the same, but with the following differences. The Approving Official (AO) (as defined at [EPAAG](#) 13.3.1.4), must concur with the waiver request and must forward the waiver request to the Category Management Branch Chief. The waiver will then be reviewed and approved or rejected by the Category Management Branch Chief, or SPE, as appropriate. This justification must also be noted in the transaction record.

If a CO or CH fails to use a Common Contract Solution when one exists and neither a waiver has been obtained nor an exception applies, execution of the action may be considered an unauthorized commitment and could result in the termination or suspension of a CO's certificate

of appointment (i.e., warrant) or a CH's delegation of purchasing authority. The CO or CH may also be held personally liable for the amount of the action.

(c) Analysis of Alternative (AoA)

An AoA is a comparison of contractual options for fulfilling an agency requirement for a good or service and is required for two types of acquisitions:

- (1) No Common Contract Solution will be used and the dollar threshold is \$50 million or more; or
- (2) An EPA Enterprise-wide Solution will be used and the dollar threshold is \$100 million or more.

Contracting Officers should work with the Office of Acquisition Solutions (OAS) Account Manager in development of the AoA.

8.0.100.6 Waiver Request Procedures

(a) After the CO, SACO or CH determines that an available required Common Contract Solution is not the best method for meeting the requirement and no exception applies, the following process must occur:

(1) The CO/SACO/CH completes the "Waiver Request to Use Contract Vehicle Other than a Common Contract Solution" form with the justification that explains why it is not in EPA's best interest to follow the policies and procedures set forth in EPAAG 8.0.100 for this acquisition, including a brief analysis of the value (price and non-price factors, e.g., delivery method, availability, country of origin, etc.)) of the Common Contract Solution not selected in comparison to the intended procurement vehicle.

A blanket/multiple waiver request is a waiver request that covers all requirements, for example of a certain category, project, or period of time. If requesting a blanket/multiple waiver, state the maximum dollar threshold of the waiver request, dates of procurement and/or number of orders subject to this waiver request.

(2) After the CO/SACO/CH has signed and dated the form, 8.0.100-A Waiver Request to Use Contract Vehicle Other Than a Common Contract Solution, the form with an attached Statement of Work, Performance Work Statement, or requirement description, is submitted to the CO/SACO/CH's Manager/Supervisor/AO. The CO/SACO/CH's Manager/Supervisor/AO must provide concurrence with the waiver request by signing, dating, and submitting to the Category Management Branch (CMB) Chief. If the CO/SACO/CH's Manager/Supervisor/AO does not agree, the waiver request is returned to the CO/SACO/CH.

(3) If the requirement is valued at \$100,00 or less, the CMB Chief may approve or deny the waiver request. If denied, s/he will check the appropriate box on the request noting the justification for denial in the comment area and return the request to the CO/SACO/CH's Manager/Supervisor/AO.

(4) If the requirement is valued over \$100,000, the CMB Chief, will make a recommendation, sign and date the request, and forward it to the SPE for approval/disapproval. The SPE will complete the form and justification and return it to the submitting CO/SACO/CH's Manager/Supervisor/AO.

(b) The CO must document the justification for the approved waiver in the contract file, acquisition's Advanced Procurement Plan and in the market research. For purchase card transactions, the approved waiver must be noted in the transaction record by the CH and uploaded in PNET with any other supporting documentation.

8.0.100.7 Responsibilities.

(a) The Category Management Branch Chief is responsible for all issues and information regarding strategic sourcing. Additionally, all waivers are processed through the Category Management Branch Chief. For information regarding strategic sourcing and/or on the Category Management Branch Chief contact information, see [Strategic Sourcing](#).

(b) The OAS Account Manager is responsible for all OMB program-related and/or Category Management issues and information. Inquiries regarding these issues should be sent to: 8.0.100@epa.gov

Appendixes:

8.0.100-A "Waiver Request to Use Contract Vehicle Other than a Common Contract Solution" Template

WAIVER REQUEST TO USE CONTRACT VEHICLE OTHER THAN A COMMON CONTRACT SOLUTION

Solicitation/Purchase Request Number: _____

Type of Request (Check One): __ Single/One-time __ Blanket/Multiple

Estimated Value of this Acquisition: \$ _____

The Contracting Officer (CO)/Simplified Acquisition Contracting Officer (SACO)/Card Holder (CH) has determined that the use of a Common Contract Solution is not the best method for satisfying this requirement. (Attach SOW, PWS or Requirement Description)

Applicable Common Contract Solution Not Being Utilized:

(title & contract number of the Common Contract Solution not being used)

Justification for Local Small Business Solutions – This acquisition is in EPA’s best interest because it is (must be both A and B):

- ☐ **A.** Structured to assist in achieving one or more of the following small business goals:
- ___ Small Disadvantaged Business
 - ___ Women-Owned Small Business
 - ___ HUBZone-certified Small Business
 - ___ Service-Disabled Veteran-Owned Small Business

- ☐ **B.** Within one of the following OMB-approved categories designated for Spend Under Management Tier 1 Credit, as necessary to achieve EPA’s small business goals:
- ___ Facilities & Construction
 - ___ Human Capital
 - ___ Research & Development
 - ___ Security & Protection

☐ Other:

Justification for all Other Non-Common Contract Solutions – Provide an explanation to support why it is not in EPA’s best interest to follow the policies and procedures set forth in EPAAG 8.0.100 for this acquisition, including a comparative analysis of the value (price and non-price factors) of the Common Contract Solution not selected versus the intended procurement strategy and if requesting a blanket/multiple waiver, the maximum dollar threshold, dates of procurement and/or number of orders subject to this waiver:

The above referenced rationale/justification must be included within the contract file, Advanced Procurement Plan, market research and elsewhere as applicable. For purchase card transactions, this rationale must be noted in the transaction record.

This waiver request is submitted by:

(Signature of CO/SACO/CH)

Date:

Reviewed/Concurred: _____

(Signature of Manager/Supervisor/AO) Date: _____

Waiver Approved: _____ Waiver Denied: _____

(Signature of Chief, Category Management Branch) Date: _____

Category Management Comments:

Waiver Request is greater than \$100,000

Solicitation/Purchase Request Number _____ waiver request is:

Approved: _____ Denied: _____

(Signature of Senior Procurement Executive) Date: _____

SPE Comments:

CHAPTER 9 – CONTRACTOR QUALIFICATIONS

Section 9.1 – Responsible Prospective Contractors (December 2019)

Subsection 9.1.1 - EPA Contract Prohibition of Corporations with Felony Convictions or Tax Delinquencies

This subsection was previously Interim Policy Notice (IPN) 12-01.

9.1.1.1 Purpose.

The purpose of this subsection is to provide guidance for EPA's contracting community on the implementation of Sections 433 and 434 of the *Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012*; which contain provisions prohibiting the award of EPA contracts to corporations with either felony convictions or tax delinquencies. The requirements set forth in this subsection are in addition to and separate from the requirement to make an affirmative responsibility determination under FAR Subpart 9.1.

9.1.1.2 Background.

Sections 433 and 434 of the *Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012* contain provisions prohibiting the award of EPA contracts to corporations with either felony convictions or tax delinquencies. This subsection was previously Interim Policy Notice (IPN) 12-01. It was first issued on 8 May 2012 and addressed EPA's FY 2012 funding prohibitions under the *2012 Consolidated Appropriations Act (Pub.L. 112-74)*.

The IPN was administratively revised on 28 December 2012 to also include EPA's FY 2013 funding prohibitions pursuant to the *FY 2013 Continuing Appropriations Resolution (Pub.L. 112-175)*. It was administratively revised a second time on 10 June 2013 to also include the *Consolidated and Further Continuing Appropriations Act, 2013 (Pub.L. 113-6)*.

The IPN was administratively revised a third time on 2 December 2013 and added the *Continuing Appropriations Act (Pub.L. 113-46)*. It was administratively revised a fourth time on 26 March 2014 on an open-ended basis (pursuant to *Civilian Agency Acquisition Council (CAAC) Letter 2014-01* dated 21 November 2013).

On 4 December 2015 the FAR Council published an interim rule in the *Federal Register* providing that new FAR provision 52.209-11, *Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law* became effective on 26 February 2016. The subject FAR provision replaces interim EPAAG provision EPA-K-04-101 and clause EPA-H-09-107.

9.1.1.3 Authority/Applicability.

This subsection is provided in accordance with [FAR 1.401\(f\)](#), 1.301(a), and Sections 433 and 434 of the *Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012*.

9.1.1.4 Definitions.

“Agent” - For the purposes of sections 433 and 434 of the Act, an agent is defined as any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

“Contract” - For the purposes of sections 433 and 434 of the Act, a contract is defined as a mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. Contracts include (but are not limited to) awards and notices of awards; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

“Corporation” - For the purposes of sections 433 and 434 of the Act, a corporation is defined as any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations], including both for-profit and non-profit organizations.

“Solicitation” - For the purposes of sections 433 and 434 of the Act, solicitation means any request to submit offers or quotations to the Government, including invitations for bids, requests for proposals, and submission of either a quotation or an offer under simplified acquisition procedures.

9.1.1.5 Policy.

(a) This subsection is applicable to all solicitations and contracts that will use funds made available by the *Department of Interior, Environment, and Related Agencies Appropriations Act, 2012*; the *FY 2013 Continuing Appropriations Resolution*; the *Consolidated and Further Continuing Appropriations Act, 2013*; the *Continuing Appropriations Act, 2014*; and subsequent relevant appropriations acts. EPA may not enter into a contract with any corporation that:

(1) Was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the Agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or

(2) Has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment

of the corporation and made a determination that this further action is not necessary to protect the interests of the government.

(b) Because these prohibitions are contained in the Agency's FY 2012 Appropriation Act, the FY 2013 Continuing Appropriations Resolution, the Consolidated and Further Continuing Appropriations Act, 2013, the Continuing Appropriations Act, 2014; and expressly prohibit the use of funds for a specified "purpose," non-compliance may have Anti-Deficiency Act implications for the Agency. The prohibitions apply to all of EPA's appropriation accounts including and after FY2012.

(c) In an interagency transaction, if the funding agency is covered by a restriction but the Agency making the award is not subject to the restriction, the restriction follows the money and the funding Agency's restriction applies.

(d) Until such time as OMB or the FAR Council provides further policy or guidance, the corporation representation prescribed in 9.1.1.5.1 does not apply to acquisitions below the micro-purchase threshold, purchase card transactions below the micro-purchase threshold,* or subcontracts.

* FAR 13.301(c) states the government-wide commercial purchase card may be used to make micro-purchases, place task or delivery orders, or make payments. Government-wide commercial purchase card transactions used to make micro-purchases (i.e., in accordance with FAR 13.301(c)(1)) are exempt from the subject restrictions. When government-wide commercial purchase cards are used in accordance with FAR 13.301(c)(2) or (c)(3) the subject appropriations restrictions apply.

9.1.1.5.1 Corporation Representation Requirements

(a) In accordance with [FAR 9.104-7\(d\)](#), contracting officers shall insert provision [52.209-11](#), *Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law*, in all solicitations. For EPA contracts that issue TOs or DOs, only one representation is needed by the corporation, either at the contract level, if a new award, or before the first TO or DO is issued.

(b) Prior to award, the contracting officer shall obtain the required representation from the corporation. No award shall be made until the contracting officer receives the corporation's representation that it has neither felony convictions nor tax delinquency. For positive representations, see 9.1.1.5.2 for further action.

9.1.1.5.2 Procedures for Corporation Information on Felony Or Tax Delinquency

If a corporation provides a representation that it has been convicted of a felony or has a delinquent tax liability, in accordance with the subject representation, the contracting officer shall consult with the Director of the Suspension and Debarment Division (SDD), within the Office of Grants and Debarment. The contracting officer shall not make an award to the corporation that has responded affirmatively unless and until SDD has referred the matter to the agency Suspension and Debarment Official (SDO), and the SDO has made a written determination that further action is not necessary to protect the interests of the government. The Agency may determine whether it is appropriate to proceed with

making award to another offeror prior to receiving a definitive resolution from the SDO. When this is the case, the CO must document their decision.

Contracting officers should allow two to four weeks for a response from SDD. Any questions relating to 9.1.1.5.2 may be directed to the Acquisition Policy & Training Branch (APTB) and/or the Office of General Counsel (OGC).

(a) Positive Representation - If a corporation provides a representation that it has a felony conviction (or officer or agent acting on its behalf) or tax liability, in accordance with the statute, and it is not already listed in the Excluded Parties List System, then the contracting officer must send the corporation's information to SDD for referral to the SDO. SDD has set up dedicated email boxes addressing Sections 433 and 434 determinations. Please see the list below for the SDD email address for your respective office. In the email to SDD the contracting officer must provide the name and address of the corporation and DUNS number. If the representation involves an agent acting on behalf of the corporation then that person's name and address must also be provided. The SDO, through SDD, will provide the contracting officer with a written determination within two to four weeks, that it has considered suspension or debarment of the corporation and either made a determination that further action is not necessary to protect the interests of the government, or that the corporation should be placed on the Excluded Parties List.

(1) Use of Microsoft Outlook Email – SDD has set up dedicated email boxes as outlined in the table below. Contracting officers should use these email addresses to complete the process for the SDO determination, and they must also cc: the OAS acquisition policy box (OMS-ARM-OAS-AcquisitionPolicy@epa.gov). Contracting officers should include their contact information and must state in the subject line of each email to SDD that the email contains "Procurement Sensitive CBI information." The SDD email boxes are monitored by government employees who are bound by OGC Form 450 non-disclosure agreements.

SDD Inquiry Email Database

Headquarters, RTP, Cincinnati	Sddinquiry-HQ@epa.gov
Region 1	Sddinquiry-R1@epa.gov
Region 2	Sddinquiry-R2@epa.gov
Region 3	Sddinquiry-R3@epa.gov
Region 4	Sddinquiry-R4@epa.gov
Region 5	Sddinquiry-R5@epa.gov
Region 6	Sddinquiry-R6@epa.gov
Region 7	Sddinquiry-R7@epa.gov
Region 8	Sddinquiry-R8@epa.gov
Region 9	Sddinquiry-R9@epa.gov
Region 10	Sddinquiry-R10@epa.gov

(2) Contracting Officer Resolution - If it is determined by the SDO that the corporation will be placed on the Excluded Parties List (<https://www.sam.gov/>), the contracting officer shall not make award to the

corporation. However, contracting officers may make an award if the SDO has considered suspension or debarment of the corporation and has made a written determination that further action is not necessary to protect the interests of the government. Until such a determination is made, the agency is prohibited from making an award to that corporation using funds made available by the *Department of Interior, Environment, and Related Agencies Appropriation Act, 2012*; the *FY 2013 Continuing Appropriations Resolution*; the *Consolidated and Further Continuing Appropriations Act, 2013*; the *Continuing Appropriations Act, 2014*; and subsequent relevant appropriations acts. Regardless of any circumstances surrounding the procurement, including urgent and compelling circumstances, this prohibition remains effective unless and until the SDO has determined that suspension or debarment is not necessary to protect the interests of the government.

9.1.1.5.3 Current FAR Subpart 9.1 Responsibility Determinations Requirements

(a) In addition to the representation requirements identified in this subsection, contracting officers are reminded that they must continue to follow the current FAR responsibility determination requirements set forth in FAR Subpart 9.1. For planned contracts that will not be funded by an appropriation subject to this subsection's restrictions, a contracting officer may make an award using the procedures in FAR Subpart 9.1. By contrast, if the contract is to be funded by EPA's FY2012, 2013, 2014 or subsequent appropriations, the contracting officer is statutorily precluded from making an award to a corporation providing a positive representation unless a determination was first made by an SDO that suspension or debarment is not required to protect the government's interests.

(b) As part of the responsibility determination under [FAR Subpart 9.1](#), if the contracting officer obtains relevant information from the Federal Awardee Performance and Integrity Information System (FAPIS) regarding criminal proceedings in connection with the award or performance of a government contract, or a tax delinquency from a contractor representation about its tax status, the contracting officer must notify SDO for a determination prior to proceeding with award, in accordance with 9.1.1.5.2, only if the information appears appropriate for the official's consideration.

(c) General reminders are identified below; however, contracting officers should carefully review all of FAR Subpart 9.1 for specific requirements that pertain to the instant acquisition.

(1) Procedures for Awards between the micro-purchase threshold and Simplified Acquisition Threshold

(i) Review certifications regarding responsibility matters under [FAR 52.212-3](#), *Offeror Representations and Certifications—Commercial Items*, if applicable;

(ii) Review the Central Contractor Registration (CCR) to ensure the contractor is registered and its registration is active;

(iii) Review *Online Representations and Certifications Application (ORCA)* for the contractor's representations and certifications;

(iv) Review records in the *Federal Awardee Performance and Integrity Information System (FAPIS)*, a system that contains specific information on the integrity and performance of covered Federal agency

contractors and grantees as part of the award and responsibility determinations. FAPIIS provides users access to integrity and performance information from the FAPIIS reporting module in the CPARS.

(v) Check the Excluded Parties List of suspended or debarred entities.

(2) Procedures for Awards exceeding the Simplified Acquisition Threshold

(i) Review certifications required by [FAR 52.209-5](#), *Certification Regarding Responsibility Matters*, and/or [FAR 52.212-3](#) for commercial items, as applicable;

(ii) Review the CCR to ensure the contractor is registered and its registration is active;

(iii) Review ORCA for the contractor's representations and certifications;

(iv) Review records in FAPIIS.

(v) Checking the Excluded Parties List of suspended or debarred entities.

9.1.1.6 Administration

The contracting officer is responsible for ensuring that the representation the corporation provided through provision [52.209-11](#) is contained in the contract file, as well as any determination made by the SDO. As discussed in 9.1.1.5.3, contracting officers are reminded that they must also document actions taken as part of their responsibility determination required under [FAR Subpart 9.1](#).

9.1.1.7 Solicitation Provision

(a) In accordance with [FAR 9.104-7\(d\)](#), contracting officers shall insert provision [52.209-11](#) in all solicitations.

CHAPTER 9 – CONTRACTOR QUALIFICATIONS

Section 9.4 - Debarment, Suspension and Ineligibility

Subsection 9.4.1 - Debarment, Suspension and Ineligibility (December 2019)

This subsection was previously Unit 9.4 of the Acquisition Handbook.

9.4.1.1 Purpose.

This guidance prescribes the responsibility of acquisition personnel in addressing contractor suspension, debarment, and ineligibility on EPA contracts, task orders, delivery orders, and purchase orders.

9.4.1.2 Background.

On November 15, 2011, the Director of the Office of Management and Budget (OMB) issued OMB Memorandum M-12-02 entitled [*Suspension and Debarment of Federal Contractors and Grantees*](#). The Memorandum directs agencies to protect the integrity of Federal acquisition and assistance programs by making effective use of the Suspension & Debarment (S&D) remedy. To meet this directive, agencies must take four major steps: (1) appoint a senior accountable official for suspension and debarment responsible for ensuring adequate resources, training, internal controls, tracking capabilities and participation in the Interagency Suspension and Debarment Committee; (2) review internal procedures to ensure the appropriate use of suspension and debarment; (3) require award officials to review relevant databases prior to award to prevent awards from being made to suspended, debarred or otherwise non-responsible entities; and (4) require prompt corrective action in the event that an award is improperly made to a suspended or debarred entity. Although EPA has a strong S&D program, the Agency responded to the OMB Memorandum by identifying diligent programs already in place and opportunities for improvement.

9.4.1.3 Authority/Applicability.

This policy applies to all acquisition offices.

9.4.1.4 Definitions.

Definitions for debarment, suspension and ineligibility can be found in [FAR 2.101](#)

9.4.1.5 Policy.

9.4.1.5.1 Internal Reporting Requirements

(a) EPA Acquisition Regulation (EPAAR)

Acquisition personnel must follow [EPAAR 1509.406-3](#) and [EPAAR 1509.407](#) procedures when a cause for debarment or suspension may exist. The reporting procedures prescribed in [EPAAR 1509.406-3\(a\)](#) and [EPAAR 1509.407](#) must also be followed under conditions which appear to warrant debarment or suspension of a contractor. Acquisition personnel must review the [System](#)

for Award Management (SAM) to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontracts with listed suspended, debarred or ineligible contractors.

In summary EPAAR 1509.406-3(a) and EPAAR 1509.407 provide the referral responsibilities for acquisition personnel which require prompt reporting if discovered information indicates that a cause for debarment or suspension may exist. This information must be immediately reported to the respective Chief of the Contracting Office (CCO). However, purchasing agents, in simplified acquisition activities which do not come under the direct cognizance of a CCO, will report such information by memorandum through their immediate supervisor, and address the CCO responsible for their offices contract acquisitions. If the CCO determines sufficient information is available that indicates causes for debarment or suspension may exist, the CCO will promptly report via memorandum to the Head of the Contracting Activity (HCA). Upon receipt of a report of a suspected suspension or debarment situation, the HCA, in summary, will take the following actions:

- (1) Notify the Director of the S&D Division of the receipt of a report of a suspected suspension or debarment situation;
- (2) Review the reported information;
- (3) Investigate as necessary to verify or develop additional information;
- (4) Provide any and all additional information to the S&D Division obtained about the suspected suspension or debarment situation, especially that obtained in accordance with [FAR 9.406-3\(b\)\(1\) and \(2\)](#);
- (5) Request that the S&D Division evaluate the information and, if appropriate, refer the matter to the Debarring Official for consideration of suspension and/or debarment;
- (6) Notify EPA Contracting Officers of those contractors who are ineligible for solicitation, award, or subcontracting, but who do not appear on the [Excluded Parties List](#) in [SAM](#); and
- (7) Notify the EPA Office of Inspector General (OIG) because the Agency must promptly notify OIG when information is discovered which may indicate potential criminal or civil fraud activity.

The Debarring official's responsibilities in response to referred causes for debarment are also found within [EPAAR 1509.406-3\(a\)](#). Detailed reporting and referral requirements for Debarment and Suspension can be found within EPAAR 1509.406-3 and EPAAR 1509.407, respectively.

(b) Reporting Requirements – EPA Acquisition Guide (EPAAG)

Acquisition personnel must obtain the required reviews and concurrences in accordance with Subsection *Reviews, Concurrences, and Checklists* of [EPAAG Subsection 1.6.1](#).

Terminations require recommendation from the service center manager (SCM) and review by the Office of General Counsel (OGC) before approval by the CCO, who will report the termination to the HCA before reporting it to the S&D Division. After approval by the CCO the cognizant contracting officer is responsible for notifying the program office of the termination. Reports of terminations for default or cancellations after award will be provided to the Office of Suspension and Debarment by the OAS Policy, Training, and Oversight Division (PTOD).

Suspected violations of the Gratuities clause, antitrust laws, and fraudulent claims are to be forwarded to the EPA OIG through the CCO. The CCO may forward information pertaining to these violations through the HCA to the Office of Suspension and Debarment upon receipt of authorization from EPA OIG;

Proposed actions relating to debarment, suspension, and voluntary exclusion agreements are required to be reviewed by OGC and approved by the HCA; and will be forwarded to the Office of Suspension and Debarment in accordance with [EPAAR 1509.406-3](#) and [EPAAR 1509.407](#).

(c) Additional Reporting Requirements

In addition to the [Excluded Parties List](#) in [SAM](#), acquisition personnel must also review the *Federal Awardee Performance and Integrity Information System (FAPIIS)* to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontracts with listed suspended, debarred or ineligible contractors.

PTOD will provide the S&D Division with Federal Procurement Data System (FPDS) access to a quarterly report listing any contracts, task orders, delivery orders, and purchase orders that have been terminated for default or canceled after award. In addition, PTOD will provide the specifics of terminations to the S&D Division, as requested.

Under the OAS Contract Management Assessment Program, an *Organizational Self-Assessment Checklist* has been added as Attachment 9.4.1-B. Within this checklist Headquarters and Regional Acquisition offices are required to address questions pertaining to the appropriate implementation of review practices and reporting procedures for terminations in accordance with the Federal Acquisition Regulation and internal EPA policies.

(d) Statutory Award Limitations

Where Congress prohibits certain entities or individuals from receiving an award through statute, acquisition offices and program offices will implement the prohibition based on [EPAAG Subsection 9.1.1](#).

(e) Office of General Counsel Case Review

For proposed suspension cases not based on an indictment, OGC must review the adequacy of evidence. This review of evidence will be facilitated by the S&D Division.

9.4.1.5.2 Remedial Action for Improper Awards/Transactions

Acquisition or program office personnel that become aware of any EPA awards or lower-tier transactions improperly made to a suspended, debarred, or ineligible individual or entity will

immediately inform the CCO, HCA, OGC or Regional Counsel, and as appropriate, the Office of Suspension and Debarment, and the Office of Inspector General. Upon direction from the HCA the responsible CCO will take expedited corrective action as determined by OGC or Regional Counsel. This may include termination, a stop work order, a cost disallowance or other legally available remedies.

9.4.1.5.3 Training

All acquisition personnel, including Agency personnel who provide oversight, administration and/or management support of EPA acquisitions (e.g., Contracting Officer Representatives (CORs)) are required to take a mandatory course annually on Suspension and Debarment responsibilities.

Current Suspension and Debarment training for OAS includes quarterly mini-training sessions facilitated by the Office of Suspension and Debarment.

Further outreach will also be provided during national meetings.

ATTACHMENT 9.4.1-A

**CAUSES FOR SUSPENSION AND/OR DEBARMENT
UNDER FAR 9.406 -2 and 9.407-2**

Under Non-Procurement Rule: Conviction or civil judgment for:

- (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
- (2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
- (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
- (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the individual/entity's present responsibility.

Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

- (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
- (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
- (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

Any of the following causes: (1) Knowingly doing business with an ineligible person, unless an exception has been granted by the EPA Suspension and Debarment Official;

(2) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(3) Violation of a material provision of a voluntary exclusion agreement entered into under §180.640 or of any settlement of a debarment or suspension action; or

(4) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

Any other cause of so serious or compelling a nature that it affects the individual/entity's present responsibility.

ATTACHMENT 9.4.1-B

ORGANIZATIONAL SELF-ASSESSMENT

Provides acquisition offices a way to benchmark and to assess the organizations effectiveness to perform terminations and report the related information.

System Criterion 21: *Terminations*

#	Criteria	Yes	No	N/A	Remarks
1.	When contracts are terminated for default, do files contain a memorandum signed by the CO explaining the reasons for the action taken? (FAR 49.402-5)				
2.	Are all the criteria and alternatives to default termination considered? (FAR 49.101(b) and 49.402-3 and -4)				
3.	Did technical personnel and legal counsel review the type of termination action prior to the CO terminating for default? (FAR 49.402-3(a))				
4.	If in default, but the requirement no longer exists, and there have been no damages to the Government, are no-cost termination settlements executed? (FAR 49.402-4(c))				
5.	Are the termination notices properly prepared? (FAR 49.102)				
6.	Are copies of termination notices sent to each assignee, guarantor, or surety? (FAR 49.102)				
7.	When a contractor is in default of contract for failure to make timely delivery, is a “show cause” letter issued and a copy sent to the surety, if any? (FAR 49.402-3(e) and 49.607) If a new date is negotiated, is consideration received for the extension?				
8.	Are termination activities approved in accordance with EPAAG Subsection 1.6.1 – <i>Reviews, Concurrences, and Checklists</i> .				

Section 9.5 - Organizational and Consultant Conflicts of Interest

Subsection 9.5.1 - Procedures for Documenting Organizational Conflict of Interest Decisions Prior to Contract Award (December 2019)

This subsection was previously Section 9.1 in the Contracts Management Manual.

9.5.1.1 Purpose.

This policy provides EPA Contracting Officers (COs) with guidance on procedures for documenting organizational Conflicts Of Interest (COI) decisions that occur prior to contract award.

9.5.1.2 Background.

The Federal Acquisition Regulation (FAR) Subpart 9.5 requires COs to analyze planned acquisitions in order to: 1) identify and evaluate potential organizational COIs as early in the acquisition process as possible; and 2) avoid, neutralize, or mitigate significant potential conflicts before contract award.

EPAAR Subpart 1509.5 prescribes standard EPAAR clauses to be used in most solicitations and contracts, except where a particular acquisition requires special provisions. The standard EPAAR solicitation provisions (EPAAR 1552.209-70 and 1552.209-72) require an offeror to certify that it is unaware of any potential COI or to disclose any potential COI of which it is aware. The standard EPAAR contract clause (EPAAR 1552.209-71) requires a contractor to also make full disclosure of any actual or potential COIs discovered after contract award.

In addition, a Comptroller General's (CG) decision (B-241372, 2/6/91), involving an EPA CO's decision to properly exclude a contractor due to a potential COI, provides further clarification of a CO's responsibility in evaluating COIs. This subsection, based to some degree on the CG decision, provides procedural guidance for a CO to use in resolving and documenting potential COIs prior to contract award.

9.5.1.3 Authority/Applicability.

The authority for this subsection is based on FAR subpart 9.5, EPAAR subpart 1509.5 and the CG decision.

9.5.1.4 Definitions.

The FAR defines "organizational conflict of interest," as meaning "that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

9.5.1.5 Policy.

Contracting Officers should make every attempt to resolve potential COIs through steps that will neutralize or mitigate these potential COIs without excluding offeror from competing. Generally, offeror will be required to address issues related to COIs in their proposals. In unusual circumstances, and after consultation with the Office of General Counsel (OGC), potential offeror may be requested to address safeguards against COIs prior to submission of proposals.

When necessary due to the nature of the potential COI, and upon approval by the Director, Office of Acquisition Solution (OAS), COs not able to otherwise avoid, mitigate, or neutralize an COI must exclude offeror from competition. The Acquisition Policy & Training Branch (APTB) and OGC must be consulted with regard to proposed actions to resolve a COI. Additionally, the Competition Advocate must be consulted before imposing any restrictions that would reduce competition. The CO must notify affected offeror of any proposed actions, including plans to exclude them from further participation in the competition, and allow them a reasonable opportunity to respond prior to the CO's final decision implementing such proposed actions.

COs should evaluate potential COI issues as early in the acquisition process as possible to avoid having offeror unnecessarily incur proposal costs only to later be excluded from competing for the contract. COs must document their evaluation only when a substantive potential COI exists. A CO's evaluation should include potential COIs at the subcontractor level as well as the prime contractor level.

COs must evaluate potential COI issues related to each procurement separately and may NOT impose across-the-board restrictions that will limit a potential offeror's ability to compete for EPA contracts.

9.5.1.5.1 Policy Support Contracts.

COs should pay particular attention to those contracts most susceptible to potential COIs, such as contracts that assist in the development of Agency policy. It would generally be considered improper to have a contractor assist in the development of policy that would have a direct impact on the same contractor, such as a Superfund Response Action Contractor (RAC) assisting in the development of policy to be followed in performing response action work. In a case such as this, the CO should evaluate how potential COIs might be neutralized or mitigated. If the CO determines that potential COIs cannot be otherwise neutralized or mitigated, the CO must avoid the COI by excluding sources with conflicts from competition.

Appendix 9.5.1-A, Sample Provisions used in a Solicitation to Exclude RAC Contractors for Award of a Policy Support Contract, contains sample provisions similar to those used in an EPA solicitation for Superfund policy support. In this sample, the CO determined that a COI could be avoided only by excluding RAC contractors from award. As indicated in Appendix 9.5.1-A, offeror was required to demonstrate that at the time of anticipated contract award it would not be a RAC or that its status as a RAC would not create a significant potential for a COI. The CO

determined prior to issuing the solicitation that the holders of certain EPA prime contracts would create a significant potential for a COI and would therefore be ineligible to compete. Offeror who first successfully demonstrated they were not RACs were eligible to submit proposals. This attachment is provided for COs that may be working on similar solicitations.

9.5.1.5.2 Procedures.

(a) The following is an overview of the basic steps a CO should take in reviewing acquisitions for potential COI prior to award and in documenting the official contract file. Each acquisition must be handled individually with these procedures adapted to the specific acquisition. The assigned CO should:

- (1) Understand thoroughly what services a contractor is expected to perform under the proposed contract by reading the statement of work and through discussions with the program office and procurement officials.
- (2) Review FAR and EPAAR requirements on COI and additional guidance provided by OAS to evaluate possible COI issues that may relate to the subject procurement.
- (3) If COI appears to be a concern, also discuss the procurement with the APTB, OGC and the program office. Document the evaluation whenever a significant potential COI exists. APTB may be consulted for examples of proper documentation.
- (4) If after these discussions the CO determines there is not a significant potential COI, the CO should still discuss the solicitation with the cognizant Chief of the Contracting Office (CCO) or Regional Acquisition Manager (RAM).
- (5) Based on these discussions, determine the best way to proceed for the procurement. For example, are the existing EPAAR provisions sufficient to protect against an COI or are special measures required, such as requiring offerors to submit a conflict of interest plan which addresses how it identifies and reports conflict of interest, or other special solicitation provisions or contract clauses? In determining how to proceed for a specific procurement, COs should propose actions that allow the identification and resolution of COI issues early in the procurement process to avoid having contractors unnecessarily incur proposal costs only to be later disqualified from competition due to COI issues.
- (6) Discuss the specific proposed action with involved procurement officials, OGC and the program office. However, recognize it is the CO's responsibility, not the program official's, to guard against an COI.
- (7) If the acquisition involves a significant potential COI and/or if special solicitation and contract provisions are proposed, the acquisition may not proceed until the cognizant CCO concurs on the recommended action. The CO must route the proposed action through APTB then OGC for review, to the cognizant CCO for approval. The CO's request must include background related to the potential COI, alternative approaches considered, and the CO's rationale in his/her proposal.

(8) A COI strategy that will restrict competition due to COI (exclusion of sources) must also be approved by the Competition Advocate and Head of the Contracting Activity (HCA) - unless the procurement is a follow-on using a strategy previously approved by the HCA. (Subsection “Reviews, Concurrences, and Checklists” in EPAAG Chapter 1).

(9) Affected contractors must be provided with an opportunity to respond to any proposed actions that would withhold award from them based upon COI considerations. The CO's rationale in proposing these actions must be thoroughly explained along with an explanation of any possible contractor actions that might allow them to be considered for award of the contract.

(10) Responses from affected contractors must be evaluated by the CO and discussed with the involved procurement officials, APTB, and OGC (as well as the program office, as necessary). Based on these discussions, the CO should propose a final decision to resolve the potential COI to the cognizant CCO. The CO's rationale and evaluation of the contractors' responses must be fully documented in the memorandum to the cognizant CCO.

(11) Once approved by the cognizant CCO, affected parties must be informed by the CO of the final decision.

(12) The cognizant CCO, Director, OAS, the Competition Advocate, and OGC should be immediately notified of any formal protests.

APPENDIX 9.5.1-A

SAMPLE PROVISIONS USED IN A SOLICITATION TO EXCLUDE RAC CONTRACTORS FOR AWARD OF A POLICY SUPPORT CONTRACT

Provision 1

Prohibition of “Response Action Contractors” from Being Considered Eligible for Award for “Management Support for the Superfund Program”

(a) An offeror shall be prohibited from receiving an award under this solicitation if:

- (1) It is determined that the offeror is a Response Action Contractor (RAC) (as defined below), is affiliated with a RAC, or proposes to utilize a RAC as a team subcontractor, and
- (2) It is determined that the offeror's status as a RAC, or relationship with a RAC, will create a significant potential for an actual or apparent conflict of interest in performing the contract work.

(b) A Response Action Contractor (RAC) is:

- (1) Any person who enters into and is carrying out a contract or agreement to provide any response action, or ancillary services related to a response action, at a facility listed on the National Priority List (NPL); and
- (2) Any person retained or hired by a response action contractor, to provide any services related to a response action.

(c) A “Response Action” is a CERCLA-authorized action at a Superfund site involving either a short term removal action or a long-term remedial response with respect to any release or threatened release of a hazardous substance, pollutant, or contaminant from a facility and includes any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, and any ancillary services related to such removal action or remedial response.

(d) The determination as to whether an offeror is ineligible for award of this contract pursuant to this provision will be made by the Contracting Officer on a case-by-case basis. The Contracting Officer has determined that award of this contract to a contractor holding certain Agency prime RAC contracts would create a significant potential for an actual or apparent conflict of interest. Accordingly, contractors holding any of the following prime contracts will be ineligible for award of this contract, such as the contracts listed below:

- Response Action Contracts (RACs);

- Superfund Technical Assessment and Response Team Contracts (START);
- Emergency and Rapid Response Services Contracts (ERRS);

Provision 2

Determination of Response Action Contractor (RAC) Status

To be eligible for award of this contract, each offeror must demonstrate either that it is not a RAC and not affiliated with a RAC, or that its status as a RAC or relationship with RAC will not create significant potential for an actual or apparent conflict of interest in performing work under this contract.

If a prospective offeror is uncertain as to whether or not it will be considered a RAC, it may submit a complete description of the work it is performing at NPL facilities for consideration by the CO. The prospective offeror must explain the basis of its view that the work does not constitute response action work.

If the prospective offeror is not a RAC, but is affiliated with a RAC, it may submit information concerning measures it proposes to take to assure that its relationship with the RAC will not create a significant potential for an actual or apparent conflict of interest. The CO must be satisfied that any measures taken to avoid conflicts of interest will be in place at the time of contract award.

All offerors must submit the information necessary to demonstrate eligibility for contract award on or before (date). The Contracting Officer will issue a final determination as to the prospective offerors' status and eligibility to submit a proposal pursuant to the solicitation.

Subsection 9.5.2 - Procedures for Handling Post Award Organizational Conflicts of Interest (November 2018)

This subsection was previously Section 9.2 of the Contracts Management Manual.

9.5.2.1 Purpose.

This subsection provides EPA Contracting Officers and program personnel with guidance on procedures for handling organizational conflicts of interest issues that arise after contract award.

9.5.2.2 Background.

EPA uses contractor support in the development and enforcement of environmental standards and regulations, as well as control of toxic substances and cleanup of hazardous wastes and oil. Our contractors often work for or have financial interests in the industries for which they are providing regulatory support to EPA. Contractors are involved in the manufacture of equipment or the marketing of software systems that may be the subject of evaluation under a resultant contract. Also, potential conflicts exist when contractors are involved in the manufacture of chemicals for which product and residue chemistry data may be reviewed and evaluated. Consequently, the objectivity of the contractors' work product for EPA and the integrity of EPA's regulations and standards could be called into question by the public. Further, it may be difficult to identify conflict of interest (COI) issues at the pre-award stage and contractors' financial and business relationships are constantly changing. Therefore, while no potential COIs may have existed at contract award, conflicts may arise during the period of performance of a contract.

EPA's Superfund cleanup contractors may also work for Potentially Responsible Parties (PRPs) responsible for pollution at Superfund sites where the contractors are working for EPA. The objectivity or integrity of the work contractors perform for EPA may be called into question as a result of their relationships with PRPs. This may prejudice EPA enforcement actions and jeopardize successful cost recovery. Due to changing cleanup priorities, multiple sites, and ongoing identification of PRPs, it is often impossible to identify work at the pre-award stage that may pose COI.

Appendix 9.5.2-A is an example of a method developed and used by the Region III Office of Acquisition and Assistance Management to evaluate whether a COI exists. These procedures can also be used when considering Limitation of Future Contracting (LOFC) requests. A parallel procedure for non-Superfund programs would be to identify the appropriate Key Indicators for the program being evaluated.

9.5.2.3 Authority/Applicability.

This subsection is based on authority of FAR Part 9 and corresponding sections of the EPA Acquisition Regulations (EPAAR).

9.5.2.4 Definitions.

The Federal Acquisition Regulation (FAR) 2.101 defines COI as a situation in which "...because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

9.5.2.5 Policy.**9.5.2.5.1 Participants in COI Decisional Process.**

(a) Contracting Officers. The FAR, the EPAAR, and EPA contract clauses make it clear that a COI determination is a Contracting Officer's (CO's) responsibility. However, all EPA employees should be sensitive to identifying and avoiding COI.

The CO should evaluate COI on a case by case basis. Before making a determination regarding whether a potential COI exists, the CO must thoroughly evaluate the facts based on program, legal, and public interest concerns, taking into consideration the best interests of the Government. In evaluating a potential COI, the CO performs a risk analysis to determine whether a significant potential COI exists. If one exists, the CO evaluates whether and how the COI can be avoided, neutralized or mitigated and may request supplemental information from the contractor to aid in making a determination. The exercise of common sense, good judgment, and sound discretion is required to make a determination and to develop an appropriate means for resolving the issue. Some cases may be clear cut so that a CO can evaluate the facts and make a quick decision based on common sense and knowledge. However, the majority of COI determinations are more complex. Often, a CO does not initially have enough information to make an informed decision.

(b) Program Offices. As part of the CO's decision-making process, COs should coordinate with the program and seek program office advice. Program personnel are in the best position to provide technical advice regarding the nature and/or relationships of the applicable work. Also, they may be aware of other issues COs should consider in evaluating whether an actual or potential COI exists.

(c) Office of General Counsel (OGC) and the Acquisition Policy and Training Branch (APTB). OGC and APTB are available to provide advice and assistance to the CO in evaluating and making COI determinations. OGC and APTB review of a COI determination is required only in the following situation; When a Delivery/Task Order (DTO) has been issued to a contractor and a COI is later identified which cannot be avoided, neutralized, or mitigated, the CO must consult with OGC and APTB before canceling the work and issuing it to another contractor. This requirement does not apply to situations where contractors have been issued a DTO which is specifically for preliminary COI screening only. OGC and APTB consultation is not required in any other COI determinations.

COs may find it helpful to obtain advice from APTB regarding remedies when a COI exists. OGC review should be requested if legal issues are raised by the CO, the contractor, or the contractor's attorney. The Office of Regional Counsel also has attorneys available for consultation on COI matters.

d) Office of Enforcement and Compliance Assurance (OECA). Potential COI may impede successful cost recovery negotiations. OECA can provide advice on how a potential COI may impact or prejudice an enforcement and/or cost recovery action. Therefore, enforcement staff input is especially helpful where the CO is basing his/her determination on the Government's potential use of the contractor as an expert witness in cost recovery or other litigation.

9.5.2.5.2 Examples of COI Information to Request from the Contractor.

The following are examples of the kinds of information a CO may find helpful to evaluate a post-award COI issue. There may be additional information you need to consider in evaluating a COI situation. The purpose of requesting this type of information is to assess the magnitude of a contractor's relationship with another party when evaluating potential COI.

- Is the work to be performed at the same site or a contiguous site where a contractor performed work, is performing work, or will perform work for a PRP? If yes, what are the details?
- Is the work to be performed for EPA similar or related to the work performed, being performed/to be performed by the contractor for a PRP? A commercial client? An industry? Explain.
- Does the contractor have any contracts to perform work for any applicable PRP(s) and what are the terms of the contract(s)?

- Does the contractor's contract with a PRP contain any confidentiality or testimony clauses?
- Request that the contractor provide a copy of any relevant information regarding the contractor's relationship to a PRP.
- How much work was performed in the last three years for the PRP(s)/commercial client(s) that pose potential COIs?
- How much work (i.e., in dollars, percentage of business, and/or gross revenue) has the contractor performed or is in the process of performing for the PRP(s)? Commercial client(s)? Industries? What is the contractor's gross revenue for each of the past three years?
- When did the contractor perform the applicable work for the PRP(s)? Commercial client(s)? Industries?
- Is work currently being performed for the PRP(s)? Commercial client(s)? Industries? If yes, what work and how long is the work expected to continue?
- If the work in question involves an organizational relationship, what is the relationship between the parties? Does the work involve a parent, subsidiary, affiliate, etc.?
- Is the contractor under contract or does it have some other arrangement with any relevant public or private clients to begin providing services/work efforts that may represent a potential COI?
- Does the contractor own or have any financial interest in a specific technology, equipment, system, or software which will be evaluated under this contract?
- Request that the contractor provide any other pertinent information bearing on the COI of which the contractor may be aware that has not been specifically requested by EPA.

9.5.2.5.3 Examples of Basic COI Information Available Within the Agency.

- What is the value of the DTO? Is it a significant amount? (Note -- While this is useful information, often the dollar value is not as relevant to COI decisions as the type of work to be performed).

- Does the work performed or to be performed for EPA relate to an existing or potential cost recovery and/or enforcement action?
- Will the contractor/subcontractor testify on behalf of the United States in the litigation?
- What are the concerns in this regard if the contractor/subcontractor were to testify?
- Will the contractor testify for the PRP?
- Has a consent decree or an administrative order been signed? If so, what are the terms of the agreement? (For example, is the party with whom the contractor has a relationship a signatory of the consent decree, and if so, what are the terms?)
- Will the work be used to support an Agency regulation or standard? If so, does the contractor have any clients that would directly benefit from the Agency regulation or standard?
- Is the work non-discretionary in nature or does it involve some degree of judgment or discretion on the contractor's part?

9.5.2.5.4 Time Frame for Evaluating Post Award Conflicts.

The Agency is committed to providing timely responses on COI issues to contractors. As a general rule, COs should strive to resolve COI issues within 10 working days of receipt of all relevant information. Failure to deal with COIs in a timely manner could cause contractors to lose business and delay implementation and work on EPA programs and projects. COs should coordinate with contractors and programs to establish specific response/decision timeframes for individual COI issues.

9.5.2.5.5 Documenting COI Decisions.

COs should maintain records of COI decisions and related correspondence in the official contract file. COs should forward an information copy of all COI decisions to APTB. In turn, APTB will analyze the COI decisions to ensure consistency across the Agency and as a basis for developing and scheduling additional COI training.

9.5.2.5.6 Waiver Procedures.

If a determination is made that a conflict cannot be avoided, neutralized, or mitigated but it is in the best interest of the Government to award/continue the WA/DO/TDD, a request for waiver

must be approved by the Chief of the Contracting Office (CCO)). COI waivers are not required under initial time-critical response actions under the Emergency Response Cleanup Services (ERCS) or the Emergency and Rapid Response Services (ERRS) programs. However, the emergency response contractor would still be required to disclose the COI in accordance with the timeframes stated in the contract.

APPENDIX 9.5.2-A

COI EVALUATION EXAMPLE RED LIGHT/GREEN LIGHT PROCEDURE

Determine which indicators are applicable and pertinent for the specific COI issue to be evaluated. The sample indicators provided below are a beginning point and will normally be useful in the majority of Superfund COI cases.

Score each "COI Indicator" by color coding the indicator **RED** for those indicators that present a high risk, or **GREEN** for those indicators that present a low risk. HINT: If you are unsure whether to mark an indicator either red or green, consider marking it half green and half red, or **YELLOW**. After each indicator has been evaluated and color coded, a visual picture will emerge to help in evaluating whether or not a conflict exists. If all of the indicators are green, the probability will be low that a conflict exists. If all of the indicators are red, the probability will be very high that a conflict does exist. If the indicator colors are a mixture of red and green, or yellow, the indicators in red must be given more careful consideration before making the decision. Be aware that some indicators may be more important than other indicators, depending on the facts involved in a particular situation. Thus, in a circumstance where there may be only one red indicator and all the other indicators are green, the COI may be of sufficient seriousness that a conflict would still exist and the contractor should not perform the work.

NOTE: This "red light/green light" process will not necessarily provide the best response for the Agency for all COI cases. Therefore, this method should not be considered the definitive answer or procedure to use when evaluating and making COI decisions, but rather used as a tool to improve consistency and timeliness in evaluating COI issues.

Sample COI Indicators:

a) Same Site

- Is the work to be performed at the same site or a contiguous site where the Contractor performed/is performing/will perform work for a PRP?

b) Related Services

- Is the type of work to be performed for EPA similar to the type of work performed for the PRP?

- Does the work to be performed for EPA impact the manner in which the contractor may already be performing related tasks?

c) WA Value

- What is the value of the WA?
- Is the value of the WA a significant amount?
(NOTE: Even if the dollar value is low, if COI is an issue, the work product from the WA could be "tainted," that is, its credibility could be in question. Also, since it is possible that the work product or, at least data/information from the WA will be used later in the process (of site decision-making/cleanup), it could potentially affect other work.)

d) Financial Dollar Relationships

- How much work [in dollars (\$) and/or percentage (%) of company revenue/gross] has the contractor performed for the PRP(s)/commercial client(s)/industry?
- Is the amount of work such that the contractor's credibility and bias could be questioned or challenged?
- Have any Confidential Clients been identified? If so, has the contractor disclosed any information other than it only has a confidential client? If not, obtain as much information as is possible to make a determination or decision without violating the contractor's confidentiality agreements.

e) Past, Present, and/or Future Relationship(s) (\$)

- When did/will the contractor perform the work for the PRP(s)/commercial client(s)?
- Is work currently being performed for the PRP(s)/commercial client(s)? And if so, what work?
- How much work was performed for the PRP(s) in the last three years?
- Does the contractor have any contracts or other arrangements to perform work for any applicable PRP(s)?

f) Sensitivity/Visibility

- Are there any extenuating circumstances that would cause this work to be considered sensitive or highly visible? (e.g., a Superfund Accelerated Cleanup Model cleanup, press coverage, special Congressional interest.)
- Could release of sensitive information endanger the Agency's cost recovery and/or enforcement actions?

g) Other

- Add any other factors that are applicable and require evaluation, but are not included above, for example:
- If the work in question involves an organizational relationship, what is the relationship between the parties? Is it a parent, subsidiary, affiliate, sister-organization, etc.
- Has a consent decree been signed? If so, who signed and what are the terms?

After completing the evaluation of each COI indicator, before a decision is made, consider whether litigation has, is, or will occur, and whether the work involved will or will not result in any enforcement action(s).

Subsection 9.5.3 - Early Conflict of Interest Disclosure (December 2019)

This subsection was previously Section 9.3 of the Contracts Management Manual

9.5.3.1 Purpose.

This subsection establishes internal policy and guidance for “Early Conflict of Interest (COI) Disclosure.” Procedures to facilitate a contractor’s ability to assess their ability for award and to assemble conflict free teams, if applicable, in preparing proposals.

9.5.3.2 Background.

Contractors have expressed concerns about being disadvantaged when assessing their eligibility for award and in preparing competitive proposals when the Agency’s final COI strategy is not disclosed timely. Untimely disclosure affects potential contractor teaming arrangements because additional time is often required to establish a competitive team and COI strategies can significantly impact the makeup of a competitive team. Late disclosure of a procurement’s COI strategy may not allow contractors sufficient time to establish new competitive teaming arrangements if an original team member will no longer be eligible for award due to a COI. If contractors cannot appropriately assess their eligibility and establish competitive teams, it may ultimately impact the amount of competition the Agency receives for the procurement.

To address this issue, and to help ensure that EPA receives the greatest amount of competition possible, OAS issued a memorandum on Early COI Disclosure (August 1998) which “encouraged” contracting officers (COs) to notify the contracting community at the earliest available opportunity about COI issues. Although this essentially voluntary procedure significantly improved the Agency’s early COI disclosure record, there still remained a sufficient number of procurements in which early COI disclosure was not made timely and the amount of competition was negatively impacted. Therefore, this policy establishes a new internal process in order to facilitate early disclosure of COI strategies.

9.5.3.3 Authority/Applicability.

The authority for this subsection is based on FAR subpart 9.5, EPAAR subpart 1509.5.

9.5.3.4 Definitions [Reserved].

9.5.3.5 Policy.

9.5.3.5.1 COI Disclosure Categories

For purposes of early COI disclosure, all Agency procurements will be categorized by contracting officers into one of the following three categories:

Category 1 - Requirements that have no COI issues;

Category 2 - Requirements that have COI issues, but in which the COI strategy for the follow-on procurement does not change from the previous or current contract; or

Category 3 - Requirements that have COI issues and are either a new, first time requirement or the COI strategy for the follow-on requirement(s) has changed from the current contract strategy.

9.5.3.5.2 Early COI Publication/Notification

For all Agency requirements, early COI procurement information and strategies shall be published and made available to the contracting community to the maximum practical extent and at the earliest available opportunity. In addition, for all Category 3 procurements, COs shall document, with adequate justification, in their findings and recommendation(s) in the contract file whether the COI strategy should or should not include additional disclosure notice time. If the finding is that additional disclosure time is required, the documentation should address the amount of additional time needed. (See discussion below on Amount of Time for Early Disclosure Notification and Waiver Procedures for more details.) Normally, this documentation should be included as part of the CO's COI Plan memorandum. Following are mechanisms which shall be used, as applicable and appropriate, for early COI notification.

(a) Acquisition Forecast Database Notices

For Category 1 type procurements, the information on the Acquisition Forecast Database shall state that there are no COI issues for this requirement. For both Category 2 and Category 3 requirements, when known, all "pertinent and appropriate" COI information, in addition to the COI strategy including eligibility for award disclaimers shall be posted on OAS's Acquisition Forecast Database along with all the other data normally posted in the Forecast Database. "Pertinent and appropriate" COI information shall normally include any known or contemplated restrictions or eligibility requirements, as well as all significant COI clauses, including the Limitation of Future Contracting (LOFC) clause. If the COI information is not yet known, the previous COI strategy shall be posted and identified as the previous COI strategy.

(b) OAS Solicitation and Amendment Webpages

When the COI strategy for applicable solicitations is known or when it changes after initial or subsequent announcements, all "pertinent and appropriate" COI information, as defined in the above paragraph, shall be posted on the OAS webpage for Solicitations and Amendments. For Category 1 type procurements, the information shall state that there are no COI issues for this procurement. For both Category 2 and Category 3 procurements, all "pertinent and appropriate" COI information shall be posted in conjunction with the other procurement data usually posted on the webpage.

(c) Other Early Disclosure Notice Mechanisms

When appropriate, the following mechanisms shall be used to inform contractors about the Agency's COI strategy as early as practical in the procurement cycle.

- (1) Post the statement of work and appropriate COI information and strategy simultaneously on the Internet when asking industry for comments;
- (2) Include the Agency's COI information and strategy in any announcements and/or publications

when soliciting sources;

(3) Disclose the Agency's COI strategy when meeting with contractors during the pre-solicitation phase; and

(4) Include the COI strategy and/or Limitation of Future Contracting restrictions in the SAM.gov announcement.

9.5.3.5.3 Additional Time for Early COI Disclosure Notification

There may be occasions when the above steps do not provide adequate early COI disclosure notice to contractors because, for example, preliminary or draft strategies may change by the time the final strategy is determined. In those cases when the COI disclosure time is clearly insufficient for contractors to reasonably assess their eligibility for award and to submit a competitive proposal, additional disclosure notice time shall be added to procurement lead times except when a waiver has been approved by the Chief of the Contracting Office (CCO). A waiver may be requested when it is determined that urgent and compelling reasons necessitate the need to not provide additional disclosure time. Normally the waiver request should be included as part of the CO's COI Plan memorandum. If the COI Plan was previously approved, the waiver will be a separate document. Waiver requests shall be routed through the Acquisition Policy & Training Branch (APTB) and the Competition Advocate prior to approval.

(a) The following guidelines shall be used to assess and determine how much additional advance notice time should be provided to contractors in order for them to adequately assess their eligibility for award, establish a teaming arrangement, or prepare a timely competitive proposal.

(1) For COI disclosure Category 1 and 2 requirements, the normal/regular solicitation and award lead times may be followed for the supplies and/or services being procured.

(2) For COI disclosure Category 3 requirements, COs shall evaluate each procurement on its own merits to determine how much additional COI disclosure time should be added to the normal procurement milestones to ensure adequate competition. The determination of the amount of additional time to be added is the responsibility of the CO and should be based on the significance of the procurement's COI strategy, i.e., eligibility for award criteria, LOFC clause restrictions, disclosure requirements, etc. As a general rule, additional procurement lead time shall be at least fifteen (15) calendar days.

(b) The following is offered for guidance when assessing and determining how much additional disclosure time should be added to a procurement's lead time. If the proposed COI strategy is anticipated to affect the eligibility of a number of current Agency contractors or anticipated offerors, an additional 45 to 60 calendar days may be reasonable. If, on the other hand, a COI strategy is only slightly different from past strategies on similar contracts, an additional 15 calendar days may be more reasonable. For additional assistance in evaluating and determining a reasonable amount of additional time, contact the APTB Manager.

Additional early COI disclosure notification time may be provided by the following mechanisms:

(1) Hold the release of the solicitation for the identified number of additional days after the

date of publication of the “final” COI strategy. For example, if it was decided to add an additional 27 days of notice time to a procurement and the final COI Plan was approved in conjunction with the posting in SAM.gov on the 1st day of the month, the solicitations would not be released until the 28th day of the month.

(2) Extend the number of days a solicitation would normally have been open by the number of additional days determined. For example, if it was determined to add an additional 15 days of notice time to a procurement and the solicitation would normally have been open for 45 days, close the proposal period in 60 days.

(3) Utilize any combination of the above two methods that add the number of additional days determined. For example, if it was determined to add an additional 15 days of notice time to a procurement, the release of the solicitation could be held for an additional 5 days and the solicitation’s due date could be extended an additional 10 days.

In addition, as applicable, COs are further encouraged when possible, to supplement these early COI disclosure procedures with other early disclosure mechanisms as determined appropriate by them to ensure contractors are provided with the earliest possible COI disclosure notification.

CHAPTER 10 - MARKET RESEARCH

Section 10.1 - Market Research

Subsection 10.1.1 - Market Research Requirements (November 2016)

10.1.1.1 Purpose.

The purpose of this section is to describe the requirements for conducting and documenting market research in EPA acquisitions.

10.1.1.2 Background.

The Federal Acquisition Regulation (FAR) 7.102 states that agencies shall perform acquisition planning and conduct market research for *all* acquisitions in order to promote and provide for: the acquisition of commercial items; maximizing competition; the selection of the most appropriate contract type; and the consideration of using pre-existing contracts..

10.1.1.3 Authority/Applicability [Reserved].

10.1.1.4 Definition [Reserved].

Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

10.1.1.5 Policy.

(a) EPA acquisition personnel shall conduct presolicitation market research for all acquisitions greater than the micropurchase threshold, except orders against existing EPA indefinite-delivery indefinite-quantity (IDIQ) contracts, blanket purchase agreements (BPAs), and Strategic Sourcing Vehicles. The contracting officer (CO) shall ensure market research is accurate, complete, and appropriate for the size, scope and complexity of the acquisition. Although the CO is responsible for ensuring appropriate market research is conducted, the CO may delegate some or all market research activities to the requiring official, contracting officer's representative (COR), contract specialist, or other individual involved in the acquisition.

(b) Because of the numerous elements to be considered, documentation of market research shall be in the form of a Market Research Report. Standard and Simplified Market Research Report templates are provided for use in the Market Research Toolkit located on the OAM Knowledge Management Site at: https://usepa.sharepoint.com/sites/OARM_Community/oam.kms. Documentation of market research shall be included and filed under the appropriate tab in the Acquisition Checklist, EPA Form 1900-70. If an Acquisition Checklist is not required, the documentation of market research shall be completed and included as part of the solicitation file.

Subsection 10.1.2 - Additional Market Research Requirements (December 2018)

10.1.2.1 Purpose.

The purpose of this section is to describe the requirements for conducting and documenting additional market research efforts for unique situations.

10.1.2.2 Background.

Besides conducting market research for a new acquisition (see EPAAG 10.1.1), there are numerous other unique situations in which additional market research efforts are required. The Federal Acquisition Regulation (FAR) identifies many of these instances. This section identifies those unique situations and details the market research efforts and documentation to be performed. Although the CO is responsible for ensuring appropriate additional market research is conducted, the CO may delegate some or all market research activities to the requiring official, contracting officer's representative (COR), contract specialist, or other individual involved in the acquisition.

10.1.2.3 Authority/Applicability.

This subsection is issued in accordance with FAR 1.301(a), and EPA Delegations Manual Chapter 1-2

10.1.2.4 Definitions [Reserved].

10.1.2.5 Policy.

The EPA acquisition personnel shall conduct additional market research in unique situations when performing certain contract actions as described below. In these situations, the CO shall ensure that additional market research is appropriately documented for the size, scope and complexity of the contract action.

10.1.2.5.1 Not Using a Strategic Sourcing Vehicle.

The CO shall perform additional market research when determining not to acquire products/services from a required Federal or EPA strategically sourced solution that otherwise could be used to fulfill the Agency's need. This includes instances when the agency's need is *similar to* products/services offered under a strategically sourced solution and the requirement could be easily modified to allow for acquisition from the strategically sourced solution. The results of market research must support the rationale and justification explaining why it is not in the Agency's best interest to acquire from the strategically sourced solution, including total cost of ownership and additional administrative costs to conduct a separate acquisition. The CO shall document the results of this additional market research in the waiver for not using an available strategically sourced solution. The waiver is in EPAAG subsection 8.0.100-A.

10.1.2.5.2 Only One Offer/Quote/Bid Received.

The CO shall perform additional market research to determine why only one offer, quote or bid was received in response to a competitive solicitation. This requirement applies when using competitive placement procedures under FAR Parts 8.4, 12, 13, 14, or 16.5. Market research efforts should include contacting vendors that expressed interest in the requirement but did not respond to the original solicitation, to determine why they did not respond. If market research determines that additional competition could be received by making minor changes to the solicitation, the CO should amend the solicitation and allow additional time for additional responses, unless doing so would be detrimental to the Agency. If the solicitation cannot be amended or additional time cannot be afforded, the CO shall document the rationale as part of the market research in a written determination to the file. If the CO intends to award when only one offer/quote/bid was received, additional market research efforts shall also include expanded cost or price research to help support the Agency's cost or price analysis. The CO shall document the results of this additional market research in a written determination for the file, and provide a copy to the Agency Advocate for Competition. For additional information see FAR 15.403-1(c)(1) and 13.106-3(a)(2).

10.1.2.5.3 Planning to Make Award on a Sole-Source Basis.

The CO shall perform additional market research to ensure that the proposed sole-source contractor is truly the only source able to meet the Agency's need. This market research must be independent of any sole-source determination from the requiring office. This requirement applies when using the placement procedures of FAR Parts 8.4, 12, 13, 14, or 16.5. This requirement also applies when performing a modification to a competitively awarded contract or order that adds work outside the scope of the contract or the original competition. An out-of-scope modification is considered a separate acquisition being conducted on a sole-source basis. The CO shall document the results of this additional market research in the justification for awarding on a sole-source basis. For additional information see FAR 6.303-2(b)(8), 8.405-6(c)(2) and 16.505(b)(2).

10.1.2.5.4 Planning to Solicit on a Brand Name Basis.

The CO shall perform additional market research when planning to solicit on a brand name basis to ensure that the proposed brand name item is truly the only item available to meet the Agency's need, and other companies' similar items do not meet, or cannot be modified to meet, the Agency's need. This market research must be independent of any brand name determination from the requiring office. This requirement applies when using the placement procedures FAR Parts 8.4, 12, 13, 14, or 16.5. The CO shall document the results of this additional market research in the justification for soliciting on a brand name basis. For additional information see FAR 11.105(a), 8.405-6(b)(1), and 16.505(a)(4).

10.1.2.5.5 Exercising an Option.

The CO shall perform additional market research when preparing to exercise an option to ensure that the option price is better than prices available in the market, or that exercising the option is

otherwise the more advantageous offer. Market research efforts shall include an informal analysis or an examination of the market to obtain relevant pricing information with which to compare to the option price. The CO shall document the results of this additional market research in the determination and findings (D&F) required by FAR 17.207. For additional information see FAR 17.207(d).

10.1.2.5.6 Planning to Make an Award that Will Result in Contract Consolidation or Bundling.

The CO shall perform additional market research when initial market research reveals that contract consolidation or bundling is necessary and justified. Market research efforts should be sufficient to demonstrate the measurably substantial benefits that consolidation or bundling would offer for the subject acquisition. The CO shall document the results of this additional market research in the Market Research Report (see EPAAG 10.1.1.5(b)). For additional information see FAR 7.107 and EPAAG 7.1.2.

10.1.2.5.7 Placing a Time-and-Materials or Labor-Hour Contract.

The CO shall perform additional market research when contemplating a time-and-materials (T&M) or labor-hour (LH) type contract as described in FAR Subpart 16.6. Market research efforts should be sufficient to justify that no other contract type is suitable to fulfill the agency's need. The CO shall document the results of this additional market research in the D&F required by the FAR. For additional information see FAR 16.601(d), 12.207(b)(2), and 8.404(h)(3), and EPAAG 16.1.1.

10.1.2.5.8 Not Setting Aside an Acquisition for Small Businesses.

The CO shall perform additional market research when deciding that a small business set-aside is not appropriate. This requirement applies when using competitive placement procedures under FAR Parts 12, 13, 14 or 15. Market research efforts should be sufficient to demonstrate that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. Market research efforts may include a sources sought announcement, requesting and reviewing capability statements from small businesses, and obtaining input from the Office of Small and Disadvantaged Business Utilization (OSDBU). The CO shall document the results of this additional market research in the Market Research Report. For actions above the simplified acquisition threshold, the CO shall include a copy of the Market Research Report with EPA Form 1900-37, *Record of Procurement Request Review* submitted for approval to OSDBU in accordance with OSDBU's *Guidance for Submitting and Reviewing EPA Form 1900-37 Packages*. For additional information see FAR 19.501(c).

10.1.2.5.9 Non-availability of EIT that Meet Section 508 Accessibility Standards.

The CO shall perform additional market research when planning to acquire Electronic and Information Technology (EIT) items that do not meet the accessibility standards of 36 CFR Part 1194 because of non-availability. This market research must be independent of any non-

availability determination from the Program Office. Market research efforts should demonstrate that EIT items are not available to meet the Agency's need, identify the specific standards from 36 CFR Part 1194 that cannot be met, and that the Agency's requirements cannot be modified to permit the acquisition of an accessible EIT item that is available. The CO shall document the results of this additional market research in the Market Research Report. For additional information see FAR 39.203(c)(2). The EIT Exception Waiver Form is located on the OAM Knowledge Management Site.

10.1.2.5.10 Significantly Amending a Solicitation after Receipt of Offers.

The CO shall perform additional market research before issuing an amendment if the substance of the amendment is so substantial as to exceed what prospective offerors reasonably could have anticipated, and therefore it's possible that additional prospective offers likely would have submitted offers had the substance of the amendment been known to them. If market research reveals that additional offers may have been received following the amendment, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. This additional market research effort *shall* be performed when contracting by negotiation using FAR Part 15 procedures, and *should* be performed when using any other placement procedures. The CO shall document the results of this additional market research in a memorandum to the file or a revised Market Research Report. For additional information see FAR 15.206(e).

10.1.2.5.11 Establishing the Maximum Quantity of an IDIQ Contract.

The CO should perform additional market research to assist in the development of a reasonable maximum quantity for a new indefinite-delivery indefinite-quantity (IDIQ) contract. Market research efforts should include reviewing predecessor contract(s), reviewing other IDIQ contracts of similar size and scope, and reviewing external sources for pricing information that, when multiplied by the Government's estimated quantities, could be used to formulate a realistic contract maximum quantity. The CO should document the results of this market research in the Market Research Report. For additional information see FAR 16.504(a)(1).

10.1.2.5.12 Commercial Item Contract Financing Terms.

The CO should perform additional market research if it is determined that contract financing is a customary commercial practice, to help determine if commercial item contract financing is appropriate and permitted for the acquisition. Market research should consider the extent to which other buyers provide contract financing for the commercial item, the overall level of financing normally provided, the percentages of any commercial advance payments, the basis for any commercial interim payments, the methods of liquidation, and any special or unusual payment terms. The CO should document the results of this market research in the Market Research Report. For additional information see FAR 10.002(b)(1) and 32.202-3.

Subsection 10.1.3 - Communication with Industry (November 2016)

This section was previously the EPA Vendor Communication Plan released via Flash Notice on October 10, 2011 and revised May 31, 2012 to include the updated EPA Vendor Communication Plan, the Office of Management and Budget (OMB) Acquisition Collaboration Toolkit, and Instructions for Posting vendor collaboration events that are prescribed by OMB.

10.1.3.1 Purpose.

The purpose of this section is to provide policy and guidance on communicating with industry when Information Technology (IT) needs are identified before release of the solicitation. Communicating with industry early in the acquisition planning stage ensures EPA has access to current market information which results in the award of contracts with effective solutions at reasonable prices. As such, the guidelines in this subsection may be used in the acquisition of other goods and services when determined to be useful by the Contracting Officer (CO).

10.1.3.2 Background.

OMB is working with agencies to improve acquisition and management of Federal information technology. To that end, in December of 2010, OMB's Office of E-Government and Information Technology issued a 25 Point Implementation Plan to Reform Federal Information Technology (IT) management (<https://cio.gov/wp-content/uploads/downloads/2012/09/25-Point-Implementation-Plan-to-Reform-Federal-IT.pdf>). A key tenet of the 25 point plan is for agencies to engage industry early on and frequently when identifying IT technology needs and building acquisition solutions. This type of engagement allows the government to benefit from industry innovation and technical expertise, leading to reductions in cost, improvements in delivery and performance, and better results.

This subsection is based on the EPA Vendor Communication Plan issued in 2011 and revised in 2012. The plan provides guidance to facilitate EPA's communication with industry.

10.1.3.3 Authority/Applicability.

As part of the ongoing government-wide effort to improve vendor communication, the Office of Federal Procurement Policy (OFPP) and OMB's Office of E-Government and Information Technology required the 24 Chief Financial Officers (CFO) Act agencies, inclusive of EPA, to develop vendor communication plans. These plans are intended to reduce barriers to communication, incorporate more industry input into agency acquisitions, publicize engagement events, and provide training and awareness to employees and vendors.

10.1.3.4 Definitions [Reserved].

10.1.3.5 Policy.

(a) *Policy.*

(1) For all acquisitions, COs are encouraged to include vendor input in the pre-award stage using one or more of the techniques noted in Federal Acquisition Regulation (FAR) 15.201(c) *Exchanges With Industry Before Receipt of Proposals*. In addition to these techniques, COs may use innovative technologies such as social media, when appropriate; however, all techniques outside of FAR Part 15 must be approved in writing by the appropriate service center manager or comparable authority level.

(2) For all new IT investments classified as Major (as per OMB Circular A-11, Section 300), the associated Acquisition Plan must address the potential need for exchanges with industry such as pre-solicitation conferences and other types of engagements, and will be considered under the Acquisition Strategy review as part of EPA's IT investment governance process. If a pre-award industry exchange is not conducted (IT investments classified as Major), the CO must include documentation in the contract file as to why industry exchanges were not conducted.

(3) Pre-award industry exchanges are encouraged, but should be conducted only if the resulting interaction may add value to the procurement process. If conducted, COs should ensure the procurement schedule allows for a reasonable amount of time for exchanges and one-on-one engagements in accordance with FAR Part 15. One-on-ones shall only be held during the presolicitation phase. Details of one-on-one meetings shall be documented in the contract file, and any information shared by the government during the meeting will be reflected in the final solicitation and/or made available to all interested parties. Contracting officers are also encouraged to release draft RFPs for all acquisitions when time permits.

(b) *Guidelines.*

(1) As stated in FAR 15.201(f), general information about Agency needs and future requirements may be disclosed at any time. When specific information about a proposed acquisition that would be necessary for preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage.

(2) Information provided to a particular offeror in response to that offeror's request shall not be disclosed if doing so would reveal the potential offeror's confidential business strategy, and would be protected under FAR 3.104 (Procurement Integrity) or FAR subpart 24.2 (Freedom of Information Act). FAR 3.104 related to procurement integrity reminds employees that there are statutes and regulations that deal with prohibited conduct. You may share business information with industry that is available to the public.

(3) The following are examples of types of information that are publicly available and are not entitled to confidential treatment:

- (i) Information concerning the identity and scope of work of other government contracts performed. (This information is available at <http://www.fedbizopps.gov>).
- (ii) General information that the contractor routinely publishes or discloses to the public as part of its regular business activities.
- (iii) Information reproduced from documents that are already public, such as RFPs, other EPA documents, or published materials.

The following examples of information are entitled to confidential treatment where the information is not otherwise publicly available and disclosure of the information is not otherwise required by statute or regulation:

- (i) Information that would disclose a firm's proposed approach to performing contract work.
- (ii) Information concerning a firm's relevant experience and expertise, except for general information, regarding the firm's Government-sponsored contracts or grants that is public information.
- (iii) Information concerning a firm's proprietary processes, devices, software, organization of reports, analyses, etc.
- (iv) Information concerning a firm's financial structure or accounting methods.

(c) Roles and Responsibilities.

(1) Contracting Officer:

- (i) Develops a plan for exchanges with offerors - With input from program office and other Government advisory groups, determines the type(s) of exchanges that will take place with industry before receipt of proposals, who will be involved, timing, etc.
- (ii) Hosts vendor collaboration opportunity - If determined appropriate, will post the vendor collaboration opportunity on FedBizOpps, assist in set-up of collaboration through [MAX](#) (collaboration tool for Federal government employees and contractors with a Federal government email address) or other social media tool, and monitor/contribute to the exchange as part of the collaboration team.
- (iii) Develops acquisition strategies to maximize small businesses - Reviews requirement and consults with Competition Advocate and Office of Small Business Programs (OSBP) for opportunities to maximize small business participation.
- (iv) Maintains relationships - Develops and maintains proper business relationships between contractor employees see EPA Agency Order 1900.1A CHG 2). Acts as a conduit to leverage those relationships toward improving the Government acquisition process.
- (v) Requirement determination - Responsible for determining, prior to award, that a contract does not include inherently governmental functions or unauthorized personal services and that controls are in place to protect against contract management vulnerabilities.
- (vi) Conduct debriefings - Responsible for pre-award and post-award debriefings on competitive procurements.
- (vii) Investigate claims - Responsible for investigating any claims of inappropriate interaction by Government acquisition personnel with contractors, and taking appropriate action if necessary to ensure proper contractual relationships (see EPA Agency Order 1900.1A CHG 2).
- (viii) Technical communication - May engage in technical communication with contractors, authorized to initiate and/or modify contracts and issue technical direction (see EPA Agency Order 1900.1A CHG 2).
- (ix) Forecasts upcoming acquisitions - Participates in Forecast meetings. Posts upcoming acquisitions to the Forecast Database on the EPA public website. Updates the information as necessary.
- (x) Documents file - Documents and maintains requirement/contract file.

(2) Program/Project Manager:

- (i) Assists in developing exchange plan with offerors - Assists the CO in determining the type(s) of exchanges with industry that would be most beneficial and will take place with industry before receipt of proposals.
- (ii) Assists in collaboration event - If determined appropriate, will assist in set-up of collaboration through MAX Federal Community collaboration site (<https://max.omb.gov>) or other social media tool and monitor/contribute to the exchange as part of collaboration team.
- (iii) Maintains relationships - Maintains proper business relationships with contractor employees in a cooperative effort involving the CO and other program personnel involved in contract management (see EPA Agency Order 1900.1A CHG 2).
- (iv) Informs CO - Always keeps the CO advised of issues relating to interactions with the contractor (see EPA Agency Order 1900.1A CHG 2).
- (v) Assists CO - Assists CO in locating possible sources for competition.
- (vi) Assists in Acquisition Forecast - Participates in Forecast meetings.

(3) Contracting Officer's Representative (COR):

- (i) Assists in developing exchange plan with offerors - Assists the CO in determining the type(s) of exchanges with industry that would be most beneficial and will take place with industry before receipt of proposals.
- (ii) Performs Review - Responsible for supporting personal services reviews on contracts susceptible to improper contractor relationships (see EPA Agency Order 1900.1A CHG 2 and EPAAG 37.1.1).
- (iii) Technical communication - May engage in technical communication with contractors or issue technical direction, but is not authorized to initiate and/or modify contracts (see EPA Agency Order 1900.1A CHG 2).
- (iv) Informs CO - Always keeps the CO advised of issues relating to interactions with the contractor (see EPA Agency Order 1900.1A CHG 2).
- (v) Provides feedback - Provides feedback and suggestions for communication improvement after contract award.

(4) General Counsel:

- (i) Provides guidance - Provides legal advice and guidance.
- (ii) Presents training - Assists PTOD, when possible, to present training to OAM staff on legal issues surrounding communications with industry such as "Conflicts of Interest" and "Discussions and Other Exchanges with Offerors."

(5) Ethics Officers:

- (i) Provide guidance - Provide guidance to Federal employees regarding maintaining proper business relationships with contractor employees.
- (ii) Assist in interpretation - Assist in interpretation of ethics rules and applications (see EPA Agency Order 1900.1A CHG 2).
- (iii) Assist in issues - Assist with ethics issues, such as social media.

(iv) Advise on interactions - Advise on interactions with contractors, financial conflicts of interest, and accepting gifts (see EPA Agency Order 1900.1A CHG 2).

(6) Office of Small Business Programs (OSBP):

(i) Promotes vendor engagement – Holds events throughout the year to reach out to the small business community and to learn about companies that EPA has not done business with previously.

(ii) Assists CO - Assists COs in researching small businesses for requirements.

(iii) Assists in Acquisition Forecast - Participates in Forecast meetings.

(iv) Vendor database - Maintains information on vendor capabilities for referral on EPA procurements.

(7) Advocate for Competition:

(i) Promotes vendor engagement - Organizes two small business Contractor Forums each year, funding permitting.

(ii) Posts vendor collaboration opportunity - If determined appropriate, will post vendor collaboration opportunities on FedBizOpps; may monitor/contribute to vendor collaborations.

(iii) Assists CO - Assists COs in researching small businesses for requirements.

(iv) Assists in Acquisition Forecast - Participates in Forecast meetings.

(8) Policy, Training, and Oversight Division (PTOD):

(i) Provides guidance - Keeps acquisition personnel apprised of information and training on vendor communication by issuing guidance through emailed quarterly Hot Tips, postings on intranet, and mini-training sessions.

(ii) Monitors communication plan - Reviews and updates communication plan as necessary; keeps personnel informed of changes.

(iii) Presents training - Presents training, with the assistance of OGC when possible, to present training to OAM staff on legal issues surrounding communications with industry such as “Conflicts of Interest” and “Discussions and Other Exchanges with Offerors.”

(9) Other Officials:

(i) The Director of EPA’s Office of Acquisition Management, Agency Head of Contracting Activity (HCA) and Senior Procurement Executive (SPE), are the senior EPA officials responsible for promoting vendor engagement. The Director will oversee this program under OAM’s Performance Measurement and Management Program.

(ii) All Federal employees interacting with contractors are responsible for ensuring their interactions are fair, impartial, and in compliance with Federal and Agency acquisition and ethics policy (see EPA Agency Order 1900.1A CHG 2).

(iii) Other Federal employees, such as the COR, Subject Matter Experts, etc., may engage in technical communication with contractors, but are not authorized to initiate and/or modify contracts or issue technical direction (see EPA Agency Order 1900.1A CHG 2).

(iv) All Federal employees are responsible for protecting sensitive information (see EPA Agency Order 1900.1A CHG 2).

(v) Information Security Officers assist with issues related to safeguarding sensitive information (see EPA Agency Order 1900.1A CHG 2).

(d) *Tools.*

(1) *Vendor Engagement Toolkit.* OMB provided the *Acquisition Collaboration Early Engagement Platforms How-To Toolkit* - February 2012 that details how to develop a collaboration event. It describes the steps in creating, operating, and closing the event, as well as information on various collaboration platforms, such as social media tools. The toolkit and additional helpful materials from OMB on vendor engagement can be found at: <https://community.max.gov/pages/viewpage.action?pageId=574718968>.

(2) *Instructions for Posting Events.* OMB has also initiated a “one-stop-shop” for vendors to search out collaboration opportunities across all agencies through the Federal Business Opportunities (FedBizOpps) website. The Vendor Collaboration page is accessible from the main FedBizOpps page. In order to facilitate the “one-stop-shop” concept, OMB has requested that collaboration events be posted to this site. EPA CO/CS can post collaboration opportunities to FedBizOpps through EPA’s Acquisition System (EAS) using EPA’s Instructions for Posting Events. To post a collaboration opportunity through EAS:

- Step 1. Log into EAS.
- Step 2. Click on “Create”; then select “Special Notice”.
- Step 3. Number your posting in the following format: “EPA-VCPx-xxx...”. The number should always begin with “EPA-VCPx” (with “x” being the next number of EPA postings). Additional identifying numbers may be added after the 2nd dash if desired (“-xxx”). Example: EPA’s first notice was the posting of the Vendor Communication Plan which was numbered “EPA-VCP1”. The next notice for a collaboration event would be numbered “EPA-VCP2-xxx” or “EPA-VCP2”, if no additional identifying numbers are desired.
- Step 4. The “Title” field should always begin with “Vendor Collaboration” to facilitate easier searching by interested entities. If your effort is for IT collaboration the construct would be “Vendor Collaboration - IT” for services “Vendor Collaboration – Services”
Note: The system will key on ‘special notice’ as the notice type and the text string “Vendor Collaboration” in the title when returning search results and interested parties would then be able to further refine by searching for “IT” or “services”.
- Step 5. The description should include the following information, at a minimum:
 - a. Collaboration description – what are your objectives?
 - b. Date or date ranges for the collaboration opportunity;
 - c. Times (if applicable);
 - d. Who can participate;
 - e. Platform being used and link to the platform or engagement opportunity (See OMB’s *Acquisition Collaboration Early Engagement Platforms How-To Toolkit* - February 2012 described in (d)(1) for more information on platforms); and
 - f. Point of contact.

Step 6. Contact the EAS Help Desk if you do not have access or have difficulties posting.

CHAPTER 13 - SIMPLIFIED ACQUISITION PROCEDURES

Section 13.1 - Procedures

Subsection 13.1.1 Single Source Justifications (January 2018)

13.1.1.1 Purpose.

This subsection establishes policy for drafting and approving single source justifications.

13.1.1.2 Background.

This subsection clarifies the requirements for single source justifications and justifications for bridge vehicles.

13.1.1.3 Authority/Applicability.

This subsection is issued in accordance with FAR 1.301(a), and EPA Delegations Manual Chapter 1-2.

13.1.1.4 Definitions. [Reserved]

13.1.1.5 Policy.

Single source justifications must be drafted in accordance with FAR 13.106-1(b) and approved in accordance with EPAAG 1.6.1-A, block 8, *Justifications that Limit Competition*.

Justifications for sole source bridge vehicles, as defined under EPAAG 6.3.1.4, must clearly be identified as "bridge" justifications, and contain the additional information required under EPAAG 6.3.1.5.2(i) through (v), as applicable. Bridge justifications must be approved in accordance with the *Bridge Justifications that Limit Competition* approval authorities contained in EPAAG 1.6.1-A, block 8.

CHAPTER 13 - SIMPLIFIED ACQUISITION PROCEDURES

Section 13.3 - Simplified Acquisition Methods

Subsection 13.3.1 Using the Government-wide Commercial Purchase Card

(September 5, 2019)

13.3.1.1 Purpose.

This section establishes policy for using the government-wide commercial purchase card at EPA.

13.3.1.2 Background.

EPA obtains commercial purchase card services through a task order with a contractor bank under the General Services Administration's SmartPay® Master Contract. EPA's purchase card program is managed by the Office of Acquisition Solutions (OAS) which is responsible for implementing and overseeing the program. Support for financial aspects of the program is provided by the Office of the Chief Financial Officer (OCFO).

Since its inception in 1987, use of the purchase card has grown prolifically at the Agency. The program offers a streamlined purchasing process that eliminates the use of purchase orders in many cases and reduces administrative costs. The purchase card payment process allows fully automated invoicing and payment processing. At EPA, the purchase card is used widely by program offices, Regions, laboratories, and field offices. On the average, the Agency processes in excess of 100,000 transactions worth millions of dollars in the aggregate each fiscal year.

13.3.1.3 Authority/Applicability.

The authority for this section is the Federal Acquisition Regulation (FAR) 13.301(b) which requires agencies to establish procedures for the use and control of the government-wide commercial purchase card.

13.3.1.4 Definitions.

Advance Payments. Payment for goods before the goods have been received or for services before the services have been rendered. A prohibited form of payment for the Government with limited exceptions. See 31 U.S.C. § 3324.

Acquisition Professional - For the purposes of this policy, an "acquisition professional" is an Agency employee in the general schedule contracting series (GS-1100) and all contracting officers, regardless of general schedule series, with authority to obligate funds above the micropurchase threshold. It does not include human resources training officers defined below.

Annual Assurance Memorandum (AAM) – An annual memorandum required to be submitted by Approving Officials (AO) certifying that the AO has performed a 100% review of all Cardholder (CH) transactions under their purview; AO duties and responsibilities have been performed in

accordance with EPAAG 13.3; and all other applicable federal and agency policies and regulations the AO has complied with.

Approving Official (AO) - The approving official is the Agency employee directly responsible for reviewing purchase cardholder transactions and determining if transactions are reasonable and necessary. AOs must have an approving official account with the contractor bank.

Cardholder (CH) - An Agency employee who has a purchase card account with the contractor bank.

Certificate of Appointment, Warrant, or Delegation of Procurement Authority - the written appointment of contracting authority for a contracting officer (CO). FAR 1.603-3 states that a CO must be appointed in writing on Standard Form 1402, Certificate of Appointment, which must include any limitations on the scope of authority. The SF 1402 is also known as a “warrant,” and may include a “delegation of procurement authority” memorandum detailing the procurement authority of the CO.

CitiManager® – the contractor bank internet-based system used to manage, track, document and control purchase card transactions.

Contract Management and Assessment Program (CMAP) - the OAS program designed to ensure that contracting organizations operate in an effective and efficient manner and includes four primary components: Internal Control Plans; Self-Assessment Reviews; Annual Self-Assessment Reporting; and Peer Reviews.

Contractor Bank - The service provider, under the General Service Administration’s SmartPay® Master Contract, with which the Agency has contracted with for purchase card services.

Contracting Office - An Agency organizational unit that provides contracting or purchasing services. EPA contracting offices are located at Headquarters, Cincinnati, RTP, Regions 1-9, and in certain Agency laboratories and field offices.

Contracting Officer (CO) – an EPA employee with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings pursuant to the Certificate of Appointment, Warrant, or Delegation of Procurement Authority.

Convenience Checks - Third party drafts or checks issued by the contractor bank to specific cardholders.

Cost Allocation System - EPA intranet data base used to “cost allocate” or pay for purchase card orders.

EPA Acquisition Regulation (EPAAR) - EPA’s regulation supplement to the Federal Acquisition Regulation (FAR) pursuant to 48 CFR Chapter 15. The EPAAR is located and maintained on the [eCFR website](#).

Funds Control Officer (FCO) - Agency employee responsible for maintaining the Document Control

Register, assigning Document Control Numbers, and ensuring that sufficient funds in an allowance are available for obligation. Also known as *Funds Certifying Official*.

GSA SmartPay® Program - the GSA program that manages contracts through which agencies and organizations can obtain charge cards for employees to accomplish the agency or organization's mission. Agencies can obtain a number of different types of charge card products and services, including purchase, travel, fleet, and integrated cards. More information on this program can be found at <https://smartpay.gsa.gov/>.

GSA SmartPay® Purchase Card Training - the mandatory online purchase card training for EPA cardholders and AOs. This training program teaches the CH and AO how to use the purchase charge card responsibly and is required for both basic and refresher training. This training can be found at <https://training.smartpay.gsa.gov/>.

Joint Committee on Printing (JCP)—This is a joint committee of the United States Congress that oversees the functions of the Government Publishing Office and general printing procedures of the Federal government. The JCP authority is derived from Title 44 of the United States Code. The JCP is responsible for overseeing compliance by federal agencies to these laws and the Government Printing and Binding Regulations.

Joint Committee on Printing Waiver (JCP Waiver) - Waiver No. 84008, dated March 19, 1984, of the Government Printing and Binding Regulations granted by the JCP, US Congress, to permit the initial publication of articles in privately published journals, encyclopedias and textbooks, including paying for page charges, open access fees, and purchase of reprints of the article at the time of publication.

Micro-purchase - an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold as defined in FAR 2.101.

Monthly Limit - The cumulative amount of orders which can be placed by a CH during the contractor bank's standard 30-day cycle (usually the 23rd of one month until the 22nd of the next month). Sometimes called the "monthly purchase limit" or "billing cycle limit."

National Purchase Card Program Manager (NPCPM) - The supervisor of the Purchase Card Team within the OAS.

Performance Measurement and Management Program (PMMP) – the OAS designed methodology for assessing the Agency's acquisition related business functions. The PMMP is intended to facilitate an EPA-wide collaborative approach to ensure that business systems effectively support EPA's mission, vision, and strategy; follow best business management practices; and comply with applicable statutes, regulations, and contract terms and conditions.

Printing – Pursuant to EPAAR 1552.208.70 the term printing means the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes

and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts. (See 13.3.1.14 (j), Agency Printing Officer Interpretation of Applicable Types of Printing Processes/Products and FAR Subpart 8.8, Acquisition of Printing and Related Supplies.)

Printing Officer/Local Printing Control Officer – An EPA employee who is the Agency’s appointed representative who has the authority and responsibility for the management of the Agency’s printing activities and procurements, as well as representing the Agency in negotiations with the Joint Committee on Printing and the Government Publishing Office. The Agency Printing Officer procures all printing for EPA-headquarters. Printing at non-headquarters installations is procured or produced only through the local Printing Control Officer.

Program Office Cardholder - A CH who is not an acquisition professional or human resources training officer.

Required Basic Training - The mandatory GSA SmartPay® training that a potential new CH or AO must successfully complete in order to obtain a purchase card or manage an AO account.

Required Refresher Training -The mandatory GSA SmartPay® training that an existing CH or AO must successfully complete every two years in order to maintain a purchase card or AO account.

Simplified Acquisition Contracting Officer (SACO) –an EPA employee who has been granted the authority to acquire supplies, services and construction in accordance with a Level I Simplified Acquisition Threshold (SAT) Warrant.

Single Purchase Limit - The maximum dollar amount a CH is authorized for an individual order. An individual order may include multiple items.

Splitting a Purchase - Breaking down a known requirement totaling more than the single purchase limit into two or more purchases merely to permit use of the card under the CH’s single purchase limit or to avoid approval requirements.

Supplemental Training - Any training in addition to the GSA SmartPay® Training, that the Purchase Card Team (PCT) and/or OAS, in their sole discretion, may require a CH or AO to successfully complete in order to maintain a purchase card or AO account. The PCT and/or OAS may require that a CH or AO successfully complete supplemental training at any time during the CH or AO two-year training cycle.

Training Officer - An Agency human resources employee who has delegated authority to purchase training in accordance with the Government Employee Training Act (GETA). A training officer is neither an acquisition professional nor a CO.

Unauthorized Commitment - An agreement that is not binding solely because the government representative who made it lacked authority to enter into that agreement on behalf of the

government.

13.3.1.5 Policy.

EPA employees shall follow the policies and procedures in this section when performing duties related to use of the government-wide commercial purchase card.

13.3.1.6 Roles and Responsibilities in the Purchase Card Program.

The key players in EPA's purchase card program are the PCT, the Cincinnati Finance Center (CFC), the contractor bank, FCOs, AOs, CHs, and the GSA SmartPay® Program. This section briefly describes their areas of responsibility.

To avoid potential conflicts of interest, adequate separation of functions is required to ensure that the same individual is not responsible for funding, approving, ordering, or verifying receipt of a purchase card transaction.

(a) The Purchase Card Team (PCT).

(1) The PCT resides in OAS and administers the EPA purchase card program (with the exception of financial matters). The team establishes Agency policy, administers the program, sets up and maintains accounts for CHs and AOs, serves as Agency liaison with the contractor bank, provides ongoing advice, and oversees the use of the card.

(2) The PCT maintains the Agency's Purchase Card Program Web Page found at <https://purchasecard.epa.gov/>. The web page includes informative information, forms and links to helpful sites.

(3) The PCT maintains the EPA Agency-wide Purchase Card Standard Operating Procedures (Agency P/C SOP) found at <http://purchasecard.epa.gov/node/112>.

(4) The PCT is managed by the Agency's National Purchase Card Program Manager (NPCPM). The NPCPM may, at any time, within their sole discretion make an immediate change to any aspect of the purchase card program, inclusive of any management and internal controls, while promulgation of the respective policy or procedure is being processed/finalized. The NPCPM has the authority to issue any such change by any means needed to convey the change to CHs and AOs. All CHs and AOs shall comply with any change issued by the NPCPM pursuant to this policy.

(b) The Cincinnati Finance Center (CFC). The CFC is part of OCFO and is responsible for national financial issues such as cost allocations, accounting corrections and manual payments. They also serve as the Agency liaison with the contractor bank for dispute resolution and monthly reconciliation. The CFC examines purchase card transactions to detect and resolve funding problems and provide appropriate corrective measures to CHs and finance personnel.

(c) The Contractor Bank. The contractor bank is selected through a competitive acquisition under the

GSA SmartPay® master contracts. The contractor bank is responsible for issuing cards, paying the vendors for purchase card orders, and providing customer services such as dispute resolution.

(d) *Funds Control Officers (FCOs)*. FCOs certify to the availability of funds, ensure that the financial transaction complies with Agency financial policy and procedures, and that all of the accounting data is accurate and complete. The method for funding purchase card orders will vary according to established office procedures. Any method is acceptable as long as the CH ensures funds are available before making a purchase.

(e) *Approving Officials (AO)*.

(1) The AO can be the CHs supervisor or an individual one organizational level above the CH. Every CH must have an AO. The AO does not have a purchase card account. AOs have a hierarchy which is matched to the cardholder purchase card account that allows the AO to review, approve, or reject the purchase transaction based on the documentation provided by the cardholder.

AOs are not authorized to establish written Individual Standard Operating Procedures (SOP) for CHs. Purchase card transactions shall be done in accordance with EPAAG 13.3.

(2) AOs are responsible for:

(i) Completing required training;

(ii) Pre approving all purchases to be made by the CH under their control to ensure these transactions comply with Federal and Agency policies (see (7) below for additional information);

(iii) Providing support to the CH in explaining and reinforcing proper procedures to cardholders' customers;

(iv) Validating all CH transactions by reviewing and approving the CH transactions pursuant to the requirements specified in the Agency P/C SOP and 13.3.1.13(k) no later than the 23rd of each month, which is the end of each monthly billing cycle;

(v) Complying with the Agency P/C SOP;

(vi) Annually performing transaction volume reviews and notifying the PCT if changes are needed in the number of CHs or CHs monthly spending limits;

(vii) Submitting an Annual Assurance Memorandum (AAM) to the cognizant OAS Division Director or Regional Acquisition Manager (RAM);

(viii) Notifying the PCT if a CH leaves their organization; and

(ix) Notifying the PCT when the AO leaves his or her organization for a period of two weeks or more, or will no longer serve as an AO.

(3) The Agency standard is for AOs to approve each requirement prior to the CH placing an order. However, the AO may stipulate, in writing to the CH, that prior approval for designated routine, repetitive requirements (such as office supplies ordered from the required source or routine and repetitive courier services) are not required.

(4) When the AO is absent, (e.g., on leave, travel) for short periods of time, two weeks or less, the AO may specify another AO in the organization who will temporarily perform their AO function. If the AO will be absent for more than two weeks, the AO shall follow the account transfer procedures set forth in 13.3.1.7(f).

(5) *Physical Location of AO and Number of CHs an AO May Oversee.* AOs must be physically located in close proximity to their CHs and oversee no more than seven CHs at any given time. When applying for an account, a proposed AO may request the NPCPM waive this requirement in extreme situations where there is no alternative for compliance. This request shall include an explanation of the special circumstances requiring a deviation from this policy, including the rationale as to why an additional AO cannot be nominated or why an AO cannot be located in close proximity to these CHs. The request must also include detailed, additional internal management controls to ensure proper procedures are followed and to minimize the potential for fraud, misuse, or payment delinquency.

(6) *Separation of Functions and Performance Appraisal.*

(i) One individual cannot function in more than one role as the AO, the CH, or the FCO on the same purchase card transaction. For program office CHs, the standard single purchase and monthly limits are \$10,000 and \$20,000 respectively. The single purchase limit for convenience checks is \$2,500; and the monthly purchase limit for convenience checks is \$5,000.

(ii) OAS strongly recommends that CHs have an element in their performance appraisals covering their purchase card responsibilities so they can be evaluated on their performance in using the card.

(7) The AO shall comply with EPAAG 13.3. To validate the CH transactions, the AO shall review and approve the CH transactions no later than the 23rd of each month, pursuant to the requirements specified in the purchase card Agency P/C SOP and 13.3.1.8(k).

(f) *Cardholders.* CHs are Agency employees who are responsible for the following:

- (1) Completing required training;
- (2) Following applicable federal and Agency policies including the Agency P/C SOP;
- (3) Making informed, responsible, and reasonable purchases;
- (4) Advising customers on appropriate purchase card procedures;
- (5) Maintaining complete records of each transaction;
- (6) Using the card ethically in accordance with the Standards of Ethical Conduct; and

(7) Notifying the PCT when they leave their organization, permanently or temporarily, such as on a detail, or their card is no longer needed.

(g) GSA SmartPay® Program.

(1) The GSA SmartPay® Program manages the set of master contracts through which agencies and organizations can obtain charge cards for employees to accomplish the Agency or organization's mission. The Agency competitively issues a task order under the GSA SmartPay® master contracts, and award their program to one of the GSA SmartPay® contractor banks. The contractor bank provides charge cards to the Agency or organization employees to make purchases on behalf of the Agency.

(2) The GSA SmartPay® Program offers online purchase card training for the CH and AO. The training allows both the CH and AO to register, set up a profile, and manage their online training courses and certificates. GSA SmartPay® training is mandatory for EPA CHs and AOs.

13.3.1.7 Establishing and Maintaining AO and Cardholder Accounts.

(a) Required Training.

(1) Effective January 2014, the former EPA one-day Purchase Card Training was retired and any new CH or AOs will be required to take the GSA SmartPay® training. Those requiring a refresher will be required to complete the GSA SmartPay® training by their due date. Prior to February 19, 2014, if an employee had successfully completed the former EPA Purchase Card Training provided by OAS, the CH or AO is covered for two years from the date of the training, and will not be required to register for or complete the GSA Purchase Card Training until the refresher period.

(2) The required basic and refresher training is titled, *GSA SmartPay® Purchase Card Training for Cardholders* found at <https://training.smartpay.gsa.gov/>. There is no separate module for the AO training, therefore, both the CH and AO shall be required to successfully complete the CH training module.

(3) CHs and AOs must complete the GSA SmartPay® training every two years to maintain the use of the purchase card account.

(4) Completing the GSA SmartPay® training does not guarantee that a purchase card will be issued. To obtain a purchase card account, the potential CH or AO must also comply with the EPA's purchase card "Application Process" specified below in 13.3.1.7(b).

(5) *Supplemental Training.* Supplemental Training is any training in addition to the GSA SmartPay® training that the PCT and/or OAS may require a CH or AO to successfully complete in order to maintain a purchase card or AO account. The PCT and/or OAS, in their sole discretion, may require a CH or AO upon written notification to successfully complete supplemental training as follows:

(i) Any CH or AO that violates any federal and/or Agency purchase card policy or procedure will be required to successfully complete, to the satisfaction of the PCT and/or OAS, any supplemental training mandated by the PCT and/or OAS. In the event a CH or AO fails to complete, to the satisfaction of the PCT and/or OAS, any supplemental training mandated by the PCT and/or OAS, the CH purchase card and/or the AO account shall be suspended or revoked, temporarily or permanently, at the sole discretion of the PCT and/or OAS. This supplemental training may be required by the PCT and/or OAS at any time during the CH or AO two-year training cycle.

(ii) The PCT and/or OAS may require, upon written notification, any CH or AO to successfully complete, to the satisfaction of the PCT and/or OAS, supplemental training as a result of the findings of any oversight review and/or information obtained by the PCT and/or OAS regarding a CH or AO transaction(s) or account. In the event a CH or AO fails to complete, to the satisfaction of the PCT and/or OAS, any supplemental training mandated by the PCT and/or OAS, the CH purchase card and/or the AO account shall be suspended or revoked, temporarily or permanently, at the sole discretion of the PCT and/or OAS. The supplemental training may be required by the PCT or OAS at any time during the CH or AO two-year training cycle.

(iii) Notwithstanding any of the disciplinary actions cited in the Agency policies and procedures, in the event the PCT and/or OAS find that a CH or AO violated any federal and/or Agency policy or procedures that demonstrates to the PCT and/or OAS that the CH or AO blatantly disregarded any federal and/or Agency policy and/or procedure, the PCT and/or OAS at their sole discretion shall temporarily or permanently suspend or revoke a CH card or AO account, without first mandating that the CH or AO complete any supplemental training.

(b) Application Process.

(1) EPA follows Federal Acquisition Regulation 1.603.3(b) which states: “Agency heads are encouraged to delegate micro-purchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased.”

(2) EPAAG Subsection 13.3.1 Using the Government-wide Commercial Purchase Card has established Policy regarding the categories and credit limits for purchase card accounts. In addition, in accordance with EPAAG 13.3.1.6 (e) (5) *Physical Location of AO and Number of CHs an AO May Oversee*, AOs must be physically located in close proximity to their CHs and oversee no more than seven CHs at any given time. This AO *Span of Control* significantly contributes to the overall management/control of the number of purchase card accounts.

(3) To ensure that the number of AOs and CHs are not excessive and are sufficient to meet the Agency’s needs, the EPA Senior Resource Officials (SROs) will bi-annually submit “Proposed Purchase Card Plans” supporting the number of purchase card accounts per EPA office based on historical and current purchase card utilization and organizational need. The PCT will then evaluate the Proposed Purchase Card Plans to ensure that the Agency has the appropriate number of purchase card holders and approvers for efficient and compliant purchase card utilization, and overall support

of the mission of the Agency.

(4) Prior to approving an application for new a purchase card account, the Division Director, equivalent or higher must justify the need for any/all new and additional purchase card accounts that exceed the number of purchase cards in the approved Purchase Card Plan for their organization (AA Ship(s) and Regional Offices(s).

(5) Only individuals that have demonstrated that they are responsible and possess the required business acumen to be entrusted with a government purchase card should be nominated as CHs and AOs. All cardholders` should be current EPA employees (no contractors).

(6) After successfully completing the required training, both the AO and CH must submit an electronic application, ***New Approving Official (AO)/New Purchase Card*** to the PCT via the [Business Application Platform \(BAP\)](#) to request establishment of an account with the contractor bank. The potential AO or CH must also provide proof of successful completion of the GSA SmartPay® Training and any/all required Supplemental Purchase Card Training. Full application instructions are available on the OAS Purchase Card Program Web Page found at <http://purchasecard.epa.gov/>.

(c) Account Set-Up.

(1) Once the PCT receives the application and establishes the account, the program office CH will be issued a Certificate of Appointment designating the CH as a micro-purchase CO.

(2) New CHs who already have been delegated procurement authority over the micropurchase threshold will not be issued another Certificate of Appointment. Once their account is established, the PCT will notify them about their single and monthly limits. CHs may begin using their purchase card upon receipt and activation.

(d) Requesting Convenience Checks.

(1) Convenience checks are an optional tool available under EPA's purchase card program for use when vendors do not accept the purchase card and the product or service is not available from another vendor. In accordance with FAR 13.305-3, the single purchase limit with convenience checks is \$2,500 for all CHs, regardless of their procurement authority. The monthly purchase limit with convenience checks is \$5,000.

(2) The CH must take into consideration that a convenience check flat fee of \$3.00 will be charged by the bank for each convenience check transaction. The fee also counts towards the CHs monthly limit and should be included as part of the funding approval process.

(3) To request convenience checks for a CH, the AO must:

(i) Submit an electronic application, ***New Convenience Check*** to the PCT via the BAP @ <https://purchasecard.epa.gov/node/111> to request establishment of a Convenience Check account with the contractor bank. The electronic application for convenience check account must also

include a justification explaining a critical need as to why the CH needs a convenience check account. If there are other convenience check writers in the same office, the justification must describe why the existing check holder cannot fulfill their needs.

(e) *Canceling or Suspending Accounts.*

(1) To cancel or suspend Purchase Card or Convenience Check accounts, the AO, or Division Director or equivalent, must submit an electronic **Cancellation Check or Card** or **Change Suspension of Card/Check** Form to the PCT via the BAP @ <https://purchasecard.epa.gov/node/111> Accounts can be suspended when an AO or CH is on extended leave (longer than two weeks) or a detail.

Accounts must be closed when an AO or CH:

(i) Transfers to another organization and will not need the account;

(ii) Resigns or is terminated;

(iii) When the card is no longer needed;

(iv) When the card is lost or stolen; or

(v) Upon the death of the employee.

(2) Whenever a Purchase Card or Convenience Check account is to be closed, the AO must destroy the card/checks before the **Cancellation Check or Card** Form is electronically submitted to the PCT via the BAP @ <https://purchasecard.epa.gov/node/111>. Do not send the card/checks to the PCT or the bank.

(f) *Account Transfers.*

(1) If a CH transfers from one organization to another and wants to retain the account, the CH must submit an electronic **Change Cardholder AO** Form to the PCT via the (BAP @ <https://purchasecard.epa.gov/node/111> specifying who the current AO is and who the new AO will be.

(2) If an AO transfers from one organization to another and will be an AO in the new organization, AO must submit an electronic **Change Cardholder AO** Form specifying which CHs the AO will oversee in the new organization via the BAP @ <https://purchasecard.epa.gov/node/111>. The AO's previous organization must also submit an electronic **Change Cardholder AO** Form via the BAP to the PCT specifying who will replace the AO that left. If a completely "new" AO is accepting the transferred CHs, the proposed AO must electronically submit a **New Approving Official (AO)** Form to the PCT via the BAP @ <http://purchasecard.epa.gov/node/111>, specifying which CHs the new AO will oversee.

(g) *Cardholder Name Changes.* To request a purchase card/convenience checks issued with a new name, the AO, or Division Director or equivalent, must electronically submit the **Change Name on Card/Check Form** with a copy of the CH's Standard Form 50 (reflecting the name change) attached/uploaded to the PCT via BAP @ <http://purchasecard.epa.gov/node/111>.

(h) *Requesting a Change in a CHs Monthly Limit.* The Agency standard monthly limit for program office CHs for purchase card transactions are single and monthly limits of \$10,000 and \$20,000, respectively. At the request of the AO, this limit may be increased or decreased. The need for an increase in the monthly limit must be substantiated. To request a change in the monthly limit, submit an electronic **Change Monthly Limit** Form to the PCT via the BAP @ <https://purchasecard.epa.gov/node/111>. Increases may be requested on a temporary basis (e.g., end of FY purchases) or permanently.

(i) *Reporting a Lost or Stolen Purchase Card.*

(1) If a card is lost or stolen, the CH shall immediately notify the contractor bank. The contractor bank's telephone number is listed on the back of all purchase cards and on the purchase card web page. The CH should record this number for future reference. This timely notification will limit the CH and the Agency of any financial liability resulting from the unauthorized use of the card.

(2) Replacement cards will be delivered by the contractor bank within two to three working days. The CH shall not attempt to place any orders until the new card has been received and activated.

13.3.1.8 Preferred Method of Micro-Purchase Acquisition.

Purchase card is the preferred acquisition method for all purchases at or below the micropurchase threshold. Use of the purchase card expedites the acquisition process, streamlines payment, and reduces administrative costs associated with traditional paper-based purchase orders. Program office CHs shall place orders for requirements at or below the micropurchase threshold unless the requirement is of a unique, complex, or sensitive nature, or the vendor will not accept the purchase card or convenience check. Examples of items which must be forwarded to the servicing contracting office for purchasing are included in section 13.3.1.9 of this policy.

13.3.1.9 Prohibitions, Restrictions, and Priority for Use of Sources.

(a) For program office CHs, the card is intended for simple, "over-the-counter" purchases with the total price fixed at the time of the order. Program office CHs are not acquisition professionals and therefore do not have the authority or expertise to process orders which require specifications, statements of work, clauses, terms and conditions, or indefinite pricing.

(b) Acquisition professional COs may use the purchase card to place orders or make payments against contractual instruments in accordance with Federal and Agency acquisition regulations and within the limits of their warrants. See FAR 13.301(b) for additional information.

(c) The use of third-party payment processor or mechanisms, such as Pay Pal, is allowable, but strongly discouraged because it is not the Agency's preferred method of processing purchase card transactions. When doing business with a vendor through a third-party payment processor or mechanism, it may be difficult for the CH to determine the merchant from which the product/service was obtained for reconciliation and Internal Revenue Service 1099 filing (when necessary). This may lead to greater risk of abuse and cause possible issues involving disputed

transactions. Also, the use of third-party mechanisms is strongly discouraged because of the potential for data breaches that may occur when a vendor processes a transaction through a third-party payment processor.

(1) To best protect the interests of the Agency, third-party payment processors or mechanisms may only be used when no other vendor can supply the product or service or meet the delivery, quantity, or quality requirements; AND the vendor will accept payment only through the third-party processor or mechanism. To ascertain if the CH can award the transaction to the vendor, the CH shall complete and document compliance with the following mandatory verification steps:

Step 1. Ask the vendor before awarding the purchase if the vendor processes transactions directly **or** if a third-party payment processor or mechanism will be used.

Step 2. If the vendor advises the CH that a third-party payment processor or mechanism will be used, the CH shall make every reasonable attempt to locate another vendor that will process the transaction directly.

Step 3. If no other vendor is available for the transaction, the CH shall document the transaction file accordingly to reflect the name of the vendor and the third-party processor or mechanism; and that the vendor is unable to accept a purchase order or contract.

Step 4. The CH shall not award the transaction to the only available vendor that will process the transaction through a third-party payment processor or mechanism until after Steps 1 through 3 have been successfully completed.

(d) *Prohibited Transactions*. All Agency CHs are prohibited from using the purchase card for the following:

- (1) Any order which is not a necessary expense of appropriated funds for official government business;
- (2) Travel related expenses, such as per diem, lodging, and transportation;
- (3) Gasoline, oil, or similar items for government-owned or leased boats or vehicles (use the official EPA fleet management cards);
- (4) Cash advances;
- (5) Long term rental or lease of land and buildings;
- (6) Individual employee memberships in professional organizations, associations, etc.;
- (7) Gift cards and gift certificates, in any denomination (any CH or AO that violates this prohibition shall have his or her purchase card or AO account suspended or permanently revoked, based upon the decision of OAS' Director and/or EPA's NPCPM); and

(8) *Printing*. Use of the purchase card is strictly prohibited for printing or photocopying services, except for the initial publication of articles written by EPA employees printed in privately published journals, textbooks, and encyclopedias, which includes page charges, open access fees, and reprints, pursuant to EPAAG 13.3.1.9 (e) Restricted Transactions, and EPAAG 13.3.1.10 Printing/Publication of Journal Articles; and the article is available in hard copy or online at the time of payment.

(e) *Restricted Transactions*. The following transactions are prohibited for program office CHs; however, they may be ordered by acquisition professional CHs, consistent with applicable law and regulation:

- (1) Any order that requires a statement of work (SOW) or specifications;
- (2) Any order where Agency or federal acquisition regulations require, or it is advantageous to the government to include, contract clauses (e.g., construction over \$2,000, a potential for conflicts of interest, etc.)
- (3) Any order requiring the cardholder to accept a vendor's terms or sign a vendor's agreement or contract;
- (4) Construction, alteration or repair of public buildings,
- (5) Expert services/consultants (as a SOW is required);
- (6) Personal services (creates an employer/employee relationship where the EPA supervises contractor employees—must be authorized by statute);
- (7) Leasing of aircraft, boats, or motor vehicles, including buses and limousines;
- (8) Institutional memberships in associations (see EPA Order 1800.2, *Participation in Professional Societies and Associations*);
- (9) Communication services, such as connection and use of cell phones, Internet, or E-mail;
- (10) Any order requiring advance payment before receipt of the item, except subscriptions to publications for the auditory and visual use of the agency, registration fees, and training;
- (11) Automatic recurring charges, where the vendor will continue to bill unless the CH takes action to prevent the charges, such as monthly charges for a cable television;
- (12) Gym Memberships; and
- (13) Health and Wellness/Employee Welfare Memberships.

(f) *Priorities for Use of Mandatory Sources*. FAR 8.002 list priorities for use of mandatory sources. In addition, although not mandatory, the Agency has a required source for office supplies.

CHs shall satisfy requirements for supplies and services from or through the mandatory Government sources, in the descending order or priority listed below, before using a commercial vendor:

(1) *Supplies:*

(i) In accordance with the *EPA Personal Property Policy and Procedures Manual* found at <https://intranet.epa.gov/ohr/rmpolicy/ads/manuals/pp-policy-procedures-manual.pdf>, CHs are responsible for determining, with assistance from the local Property Utilization Officer, whether supplies are available from Agency inventory or excess from other agencies.

(ii) Federal Prison Industries (see FAR Subpart 8.6);

(iii) Supplies that are on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (see FAR Subpart 8.7);

(iv) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points;

(v) Federal Supply Schedules (FSS), Government-wide acquisition contracts, multi-agency contracts, and any other procurement instruments intended for use by multiple agencies, including blanket purchase agreements (BPAs) under FSS contracts (e.g., Federal Strategic Sourcing Initiative (FSSI) agreements found at <https://www.gsa.gov/fssi>); and

(vi) Commercial sources (including educational and non-profit institutions) in the open market.

(2) *Services.* Services that are on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (see FAR Subpart 8.7).

(3) EPA's Strategic Sourcing Vehicles. CHs are required to check and use EPA's Strategic Sourcing Vehicles for supplies and services found at <http://oamintra.epa.gov/?q=node/659>.

13.3.1.10 Printing/Publishing of Journal Articles

(a) *Initial Publication of Articles Written by EPA Employees in Privately Published Journals, Textbooks and Encyclopedias and the Associated Charges (i.e., page charges, open-access fees, reprints/separates at the time of their publication directly from the private publisher, and additional fees for color printing (figures/graphs)).* Only after obtaining the prior approval from both the AO and either the Printing Officer or a local Printing Control Officer pursuant to EPAAG 13.3.1.12, a Simplified Acquisition Contracting Officer (SACO), or a Contracting Officer (CO) with a valid purchase card account, or a Program Office CH may award a purchase card order for the initial publication of an article written by an EPA employee printed in a privately published journal, textbook, and encyclopedias.

(b) *Joint Committee on Printing Waiver for Publishing Journal Articles.* All requirements

mandated by the Joint Committee on Printing Waiver for Publishing Journal Articles (JCP Waiver), No. 84008, dated March 19, 1984 remain in full force and effect. SACOs, CO, or Program Office CHs are required to obtain prior approval from either the Printing Officer or local Printing Control Officer specified in EPAAG 13.3.1.12 for procurements subject to this section.

(c) *Advance Payments*. The Program Office CH is strictly prohibited from making any advance payment to a private publisher or vendor for printing or publishing of journal articles. Only the SACO or the CO is delegated the authority to make advance payments for printing or publishing of journal articles in accordance with applicable agency policy, federal regulation and statute.

The SACO or the CO may:

(1) Issue a purchase card order in an amount that is less than or equal to the micropurchase threshold.

(2) As applicable the SACO or CO must comply with the requirements specified in the EPA Acquisition Regulation (EPAAR) 1532.003.

(3) Regardless of the dollar amount of the purchase card order, the SACO, or the CO shall comply with all of the following requirements and restrictions before authorizing any advance payment.

(a) As a general rule advance payments are prohibited by statute. Unless there is a specific exception authorized by law, the Government is prohibited from making advance payments for goods before the goods have been received or for services before the services have been rendered. See 31 U.S.C. § 3324.

(b) There are two main exceptions to the advance payment prohibition which may be pertinent to commercial purchases at EPA. COs and SACOs should also be aware that additional exceptions to the advance payment prohibition may be available through appropriations law or through statutes applicable to specific EPA programs. Please consult with the applicable EPA program office and the Office of General Counsel when seeking to authorize advance payments.

(1) Exception No. 1: Advance payments are not prohibited when appropriate or customary in the commercial marketplace and in the best interest of the government. Advance payments “may be made under the terms and conditions that the head of the executive agency determines are appropriate or customary in the commercial marketplace and are in the best interest of the Government. See 41 USC § 4501- 4505, as implemented through FAR Subpart 32.2 and EPAAR § 1532.003.

At EPA, the Administrator’s authority to authorize advance payments for commercial micropurchases has been delegated to the contracting officer. For commercial item purchases exceeding the micropurchase threshold but not exceeding the simplified acquisition threshold, advance payments may be approved on a ‘case-by-case basis” at one level above the CO. See EPAAR § 1532.003.

The CO and SACO must be aware of the following requirements and restrictions before authorizing advance payments under this exception for commercial items of any dollar value:

(i) Under this exception, advance payment must be limited to no more than 15 percent of the contract price. This requirement cannot be waived. See 41 U.S.C. § 4505(c); FAR 32.202-1(b)(6) and 32.202.

(ii) The SACO or CO shall see FAR 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the purchase card.

(iii) *File Documentation.* The SACO, CO or Program Office CH must document the file with supporting rationale demonstrating each of the elements below pursuant to EPAAR 1532.003.

(1) The publication of the journal article is a commercial supply or service. Consult FAR 2.101 for a comprehensive definition of the term “commercial item.”

(2) It must be “appropriate or customary in the marketplace to make financing payments for the item.”

(3) Advance payment for the item, authorized by the SACO or the CO, must be “in the best interest of the Government.”

(vii) The SACO, CO or Program Office CH must ensure that the article is published either online or in hard copy and must “document the file with evidence of receipt of publication.”

(viii) There must be “adequate security” from the contractor, potentially including a lien on property of value, for the Government’s advance payment. Note, however, that the SACO, or the CO could determine that the contractor’s financial condition is adequate security. This requirement for adequate security may be waived consistent with commercial terms and conditions. See 41 U.S.C. § 4503 and 4505(d); FAR 32.202-1 and 32.202-4.

(2) Exception No. 2: Advance Payments are not prohibited when purchasing books, magazines, or other materials for the agency’s reading or listening, including on a subscription basis.

Advance payments are allowed for “charges for a publication printed or recorded in any way for the auditory or visual use of the agency. See 31 U.S.C. § 3324(d)(2). This exception means that EPA can pay in advance and in full for books, magazines, and other materials obtained for EPA’s use for reading or listening, including on a subscription basis.

An EPA program office may seek to pay in advance for EPA’s own research articles to be published in an outside professional or technical journal so as to publicize EPA’s work or viewpoint to the general public. This type of purchase does **not** fall within Exception No. 2, as it is not a purchase for the auditory or visual use of the Agency. The CO or SACO may consider whether such an advance payment falls under Exception No. 1 as appropriate or customary in the commercial marketplace and in the best interest of the Government.

(f) *No Advance Payment Authorized by the SACO, CO.* In all instances where the SACO or the CO has determined that advance payment is not in the best interest of the government and not authorized, the SACO, or the CO shall include, at a minimum, the following terms and conditions in the purchase card order:

- (1) The private publisher shall not bill EPA prior to publication of the article, and
- (2) The SACO, or the CO is not authorized to, and shall not pay the private publisher until after the article is published either electronically (online) or in hard copy.

(g) *Internal Control/Oversight Review.* EPA's National Purchase Card Program Manager, or his designee, will unilaterally decide to suspend or revoke the CHs account in those instances where any oversight review, conducted at any time, reveals that:

- (1) The SACO, CO, or Program Office CH did not comply with the applicable agency policy, federal regulation or statute pertaining to advanced payment of publishing articles written by EPA employees in private journals, textbooks, or encyclopedias and/or,
- (2) The SACO, or the CO did not include the required terms and conditions specified herein in the purchase card order and/or,
- (3) The SACO, or the CO paid the private publisher prior to the initial publication of the article, and in the case where advance payment was used, without following advance payment procedures pursuant to EPAAG 13.3.1.10(c) and/or,
- (4) A program office CH violates any policy stated herein and inappropriately orders or pays for the initial publication of articles written by EPA employees published by a private publisher.

13.3.1.11 Supporting the Agency's Mission through Purchase Card Orders.

Before placing orders, CHs and those responsible for defining procurement needs should consider a broad range of environmental factors including: impacts to human, animal, and plant life, energy and water efficiency, resource conservation, recycled and recovered material content, waste prevention opportunities, renewable materials, air, water and land impacts, hazardous constituents, toxicity, effects of packaging and transporting products and services, environmental impacts of a product or service throughout its life cycle, from its design to its ultimate disposal, and other environmental attributes. By considering these factors the CH supports the Agency mission, create and expand markets, and promote environmental stewardship. EPAAG 23.1, *Sustainable Acquisition Policy*, sets forth Agency policy on "greening" procurement.

13.3.1.12 Purchase Card Transactions That Require Prior Approvals.

- (a) Before placing the order, the CH shall obtain approval from the appropriate individual as identified below. Approvals shall be in accordance with the requirements specified in Citibank Task Order GS36FGA002/89303018FMA400044 electronic system CitiManager

Item	Approving Official
Information Technology (IT) Electronic and Information Technology (E&IT)	Information Management Officer (IMO)
Conference facilities and meeting rooms Audio-visual equipment Furniture and room decorations Cubicle modifications Building alteration and repair Janitorial and maintenance services	Facilities Manager
Items relating to health and safety Toxic or hazardous chemicals (except consumer products used for a duration and frequency similar to that of a consumer) Air purifiers, water filters Personal protective clothing and equipment, such as respirators, body armor, steel toe safety shoes, etc.	Safety, Health and Environmental Manager
Protective services and equipment, including guard protection, security alarms, monitoring and detection devices, and safes	Security Manager
Paid Advertisement for personnel recruitment	Human Resource Official
Training (regardless of cost or location)	Training Officer
Initial publication of articles written by EPA employees printed in privately published journals, textbooks, and encyclopedias, which includes page charges, open access fees, and reprints.	Printing Officer or local Printing Control Officer

(b) *Information Technology (IT) and Electronic and Information Technology (E&IT).*

(1) Pursuant to Interim Policy Notice 15-07, Approval of Information Technology Acquisitions, approval for all IT product and service acquisitions shall be obtained from the Chief Information Officer (CIO) or delegated representative of the CIO. Approvals shall be obtained using the IT Acquisition Approval Process listed as an attachment to IPN 15-07. The process can also be found at: <https://oamintra.epa.gov/files/OAM/FITARAIPNAttachment.docx>. This approval process is subject to change and requiring officials should continually check back for updates to the process.

Information technology, inclusive of Electronic and information technology (E&IT), means:

A. Any service or equipment, or interconnected system(s) or subsystem(s) of equipment, that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

B. For purposes of this definition, such services or equipment are used to a significant extent in the performance of a service or the furnishing of a product, by the agency directly, or by a contractor under contract with the agency.

C. The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including cloud computing and support services that support any part of the lifecycle of the equipment or service) and related resources.

D. The term “information technology” does not include any equipment that is acquired by a contractor incidental to a contract which does not require its use.

(2) Section 508 of the Rehabilitation Act (29 U.S.C. 749d) was enacted to ensure that federal employees and members of the public with disabilities have access to the federal government's electronic and information technology (E&IT). For more information about Section 508 and EPA's role in ensuring accessibility see <https://intranet.epa.gov/accessibility/>. Orders placed with purchase card shall comply with FAR Subpart 39.2, Electronic and Information Technology, and Section 508 requirements. For additional information on Section 508, such as what products it applies to and how to locate vendors, go to <https://www.section508.gov>. This site includes the “Buy Accessible Wizard,” a web-based tool to help users determine and document Section 508 requirements that apply to a particular E&IT acquisition.

(c) *Printing*. Use of the purchase card is strictly prohibited for printing or photocopying services, except for the initial publication of articles written by EPA employees printed in privately published journals, textbooks, and encyclopedias, which includes page charges, open access fees, and reprints, pursuant to EPAAG 13.3.1.9 (e) Restricted Transactions, and EPAAG 13.3.1.10 Printing/Publication of Journal Articles; and the article is available in hard copy or online at the time of payment.

(d) *Paid Ads*. All CHs have the authority to place orders for paid advertisements (e.g., public notices). CHs must ensure that any necessary local or programmatic approvals of the ad are obtained before placing the order. Paid advertisements for personnel recruitment shall be approved by the Office of Human Resources. CHs must keep a copy of the published advertisement in their records, see FAR 5.503 for details.

13.3.1.13 Purchases Requiring Close Scrutiny.

(a) CHs and AOs are advised to use caution when placing orders for clothing, entertainment, novelty items, non-monetary awards, light refreshments, conference support, gym memberships, health and wellness memberships, and employee welfare memberships. These purchases require close scrutiny to ensure they are necessary expenses of the appropriated funds being utilized.

(b) The reason, authority, and approvals for these purchases shall be documented in the CHs records. For questions concerning the necessary expense rules contact the Office of General Counsel, Civil Rights and Finance Law Office.

(1) *Clothing*. CHs may purchase clothing under the following circumstances:

- (i) Uniforms, “special clothing,” and clothing with identifying insignia covered by EPA Order 4800.1 A1, *EPA Policy for Providing Wearing Apparel to Employees*;
- (ii) Protective clothing, covered by EPA Order 1440.1, *Safety, Health and Environmental Management Program*;
- (iii) Clothing which is presented as a non-monetary award in accordance with OHR 3130 A2, *Recognition Policy and Procedures Manual*; or
- (iv) When clothing is otherwise determined to be a necessary expense. Consult the Office of General Counsel, Civil Rights and Finance Law Office, for assistance with this determination.
- (v) When purchasing clothing, the CH shall follow the requirements of the applicable directive and document the file as to the circumstances justifying the purchase.

(2) *Entertainment and Recreational Items.*

- (i) Entertainment items include food, music, and other supplies for what could be viewed as parties. The purchase of any form of entertainment is generally prohibited. However, limited exceptions are allowed for entertainment directly related to the Agency's official employee recognition award ceremonies under Delegation 1-51, a Pollution Prevention Act ceremony under Delegation 1-111, and formal recognition of cultural or ethnic awareness programs. Both Delegations are listed in the Agency Delegations Manual found at <https://epawww.epa.gov/rmpolicy/ads/delegat.htm>. CHs and AOs shall seek advice from the Office of General Counsel, Civil Rights and Finance Law Office regarding the expenditure of an appropriation for entertainment.
- (ii) Always consult the Office of General Counsel, Civil Rights and Finance Law Office for advice before purchasing recreational items for Agency employees in remote or isolated areas.

(c) *Novelty or Specialty Items.*

- (i) Purchase of novelty or specialty items, including, but not limited to plastic key chains, cups, water bottles, tote bags, bumper stickers, posters, buttons, magnets, or pins shall be made in accordance with EPAAG 13.2.
- (ii) Printing on novelty or specialty items must be approved by the local product review officer and printing officer. For additional guidance contact the Headquarters Printing Management Team at 202-564-9641 or your Print Control Officer.
- (iii) When selecting novelty or specialty items, CHs shall consider priority sources, see 13.3.1.9(f), and environmental factors, see 13.3.1.11.
- (d) *Informal Non-Monetary Awards.* CHs may purchase informal non-monetary awards in accordance with Chapter 3 of OHR 3130 A2, *Recognition Policy and Procedures Manual*. CHs records shall document what was purchased, who received the award, who authorized the award, when and why the award was presented.

(e) *Light refreshments or meals.* Using appropriated funds to purchase light refreshments or meals is a considerably restricted and dynamic area in terms of policy interpretation and implementation. The CH must consult EPA Order 1900.3, Food at an EPA Conference, Workshop, Ceremony, Reception or Observance. CHs are advised to thoroughly research this subject, seek advice from the Office of General Counsel for questions concerning specific situations, obtain required approvals, and include supporting documentation in their files before placing an order for light refreshments or meals.

(f) *Conferences, Meetings, Retreats and Other Events.* Because of the complexity of planning and procuring conference support, OAS recommends these services be ordered by acquisition professionals. The following applies to orders for conferences, meetings, retreats and other events:

(1) The total value of the acquisition package for the event, including space rentals, audio visual support, telephone and Internet, and light refreshments, etc. shall not exceed the CH's single purchase limit.

(2) Prior approval is required for the acquisition of commercial meeting space and justification is required for the acquisition of light refreshments or novelty items. These approvals and justifications must be retained in the CHs records.

(3) Do not sign hotel agreements or contracts. If the facility insists on a signed contract, refer the purchase to your contracting office.

(4) Once the CH has placed the order, any requirements for additional supplies or services must be placed by the CH. Additions or changes to the CH order by other Agency employees constitutes an unauthorized commitment and shall be handled in accordance with EPAAR 1501.602-3 and EPAAG 1.1.

13.3.1.14 Purchase Guidelines.

(a) *Protect the Purchase Card, Convenience Checks, and Account Number.*

(1) Unless the CH is doing field work or emergency response support, purchase cards and convenience checks must be secured at the CH's EPA office location. To avoid unintended misuse on personal purchases, do not routinely carry purchase cards and convenience checks along with personal credit cards and checks.

(2) The government purchase card and convenience checks are issued to individual CHs for purchases otherwise authorized by law or regulation only. The employee, whose name is embossed on the card or checks, is the custodian and sole authorized user. CHs shall not allow anyone else to use their cards, convenience checks, or account number to make purchases.

(3) CHs shall not knowingly allow vendors to permanently maintain a standing account which contains the CH's account number. Setting up a standing account with a supplier creates the potential for individuals, other than the CH, to call and place unauthorized orders "on EPA's account" or for the vendor to process charges without the CH's knowledge.

(4) While use of electronic commerce is strongly encouraged, CHs shall ensure all on-line purchases are made only through secure web sites of responsible businesses. (See section 13.3.1.13(e) on placing orders with responsible businesses.)

(b) Plan and Consolidate Your Requirements to Avoid Splitting Orders.

(1) CHs shall not split requirements to circumvent single purchase limits or to avoid any required approvals. As CHs receive procurement requests from customers, they can plan their orders to combine requirements in order to qualify for volume discounts and administrative savings. Unless there are compelling reasons not to do so (e.g., unavailability of funds, lack of adequate storage space), CHs shall combine similar items. Requirements which exceed the authority level of the CH's single purchase limit shall be forwarded to the cognizant contracting office.

(2) It is improper for organizations and cardholders to take large requirements that are clearly known in advance and break them into smaller requirements to be acquired over time through a series of purchase card orders either by a single CH or a number of CHs.

(c) Use Small Businesses. CHs are encouraged to use small businesses whenever possible when placing orders with commercial vendors. A number of databases such as the System for Award Management found at www.sam.gov are available to assist cardholders in locating qualified sources/businesses. The Office of Small and Disadvantaged Business Utilization and regional small business specialists are also available to assist with identifying business sources.

(d) Distribute Purchases Equitably when Using Federal Supply Schedules or Commercial Sources. FAR 13.203(a)(1) states, to the extent practicable, CHs shall distribute micropurchases equitably among qualified sources.

(e) Place Orders with Responsible Businesses. Before ordering from commercial sources, CHs shall check the System for Award Management (SAM) Exclusions at www.sam.gov to ensure the vendor has not been excluded from federal procurement and non-procurement programs.

(f) Tax Exempt Status. CHs shall remind vendors that orders are for the U.S. Government and are tax exempt. If a vendor insists on charging tax, the CH should not place the order unless there is no alternative.

(g) Orders for Equipment Repair. Sometimes equipment repairs require disassembly or inspection before the vendor can determine the repair price. When this is the case, the CH must obtain a written estimate from the vendor in which the vendor agrees not to exceed the stated amount without authorization from the CH. In no case shall the CH authorize repairs where the repair price exceeds the replacement cost of the item or if the total cost for the repair will exceed the CH's single purchase limit. CHs are cautioned to be prudent when ordering these types of repairs.

(h) Independent Verification of Receipt.

(1) Independent verification of receipt/third party verification of equipment, property, supplies or services shall be performed for all purchase card transactions. Independent verification of

receipt/third party verification may be performed by an Agency employee, other than the CH, AO or FCO of the transaction; contractors and/or grantees.

(2) For all orders of accountable or sensitive property, it is mandatory that the CH obtain independent verification of receipt/third party verification only from the program office's Property Utilization Officer (PUO) or property official to ensure that: (a) any accountable or sensitive item ordered was received; and (b) any accountable or sensitive property is appropriately recorded and subsequently tracked by the Agency's Property Office. See the *EPA Personal Property Policy and Procedures Manual* found at <https://intranet.epa.gov/ohr/rmpolicy/ads/manuals/pp-policy-procedures-manual.pdf> for definitions and explanations of accountable and sensitive property.

(i) *Property Acquisition and Tracking.*

(1) Pursuant to the *EPA Personal Property Policy and Procedures Manual*, CHs shall not purchase items if the transaction involves trades or exchanges of property. The program office CH is responsible for coordinating with their organization's property official to ensure that any accountable or sensitive personal property the CH orders is appropriately tracked.

(2) In accordance with Section 3.4.2 of the *EPA Personal Property Policy and Procedures Manual*, when purchasing equipment for EPA purposes/mission, regardless of the cost, the CH is responsible for ensuring:

- (i) With the assistance of the PUO that items are not available from EPA excess inventory;
- (ii) With the assistance from the PUO that items are not available from other federal agencies excess inventory;
- (iii) Items are not restricted for purchase by the CH;
- (iv) Special approvals are obtained before purchase;
- (v) Purchased items do not involve trades/exchanges of property;
- (vi) Purchases of accountable personal property are reported to the Property Accountability Officer and/or the Custodial Officer so that property can be properly decaled and accountability records can be established by the Agency's Property Office; and
- (vii) Documenting receipt of the purchase card transaction and for follow-up of any discrepancy with the purchase card transaction.

(j) *Use of Convenience Checks.*

(1) Convenience checks are an optional tool available under EPA's purchase card program and are limited to a maximum single purchase amount of \$2,500 for all account holders regardless of limits that may be established on the CH purchase card account. Convenience checks may only be used

when a vendor does not accept the purchase card and the product or service is not available from another vendor.

(2) The CH must take into consideration that a convenience check flat fee of \$3.00 will be charged by the bank for each convenience check transaction. The fee also counts towards the CHs monthly limit and should be included as part of the funding approval process.

(3) Use of the check is a cash transaction. Issuing the check, in essence, pays the vendor immediately. Convenience check transactions cannot be disputed through the contractor bank.

(4) For Internal Revenue Service (IRS) Form 1099M reporting, CHs must record the complete legal name and address of the vendor, and the vendor's tax identification number. If the order is placed with an individual, CHs must record that individual's social security number.

(5) Convenience checks shall not be issued for cash or to an EPA employee.

(k) *Record Keeping.*

(1) Records of purchase card transactions are official Agency records and shall comply with Agency and federal record keeping requirements. (See National Records Management Program found at: <http://intranet.epa.gov/nrmp> and FAR 4.805(b).) Purchase card transaction and review records belong to the CH's organization and must be maintained by that organization after the CH leaves.

(2) All purchase card transactions, except as specified in subparagraph (i), shall be entered into CitiManager as specified in the Agency P/C SOP at: <https://purchasecard.epa.gov/files/EPA%20Purchase%20Card%20Agency%20SOP.pdf> As a result of the mandatory requirement to use CitiManager, paper copies of the CH log are no longer required or recognized as the official record of the CH transactions.

(i) Exception: Contract Specialists, Contracting Officers, and Simplified Acquisition Contracting Officers who have entered their purchase card transactions and uploaded the appropriate documentation in EAS are not required to upload the same documentation in CitiManager. However, they are required to log into CitiManager and annotate in the "Transaction Notes" of the purchase transaction the file name/designation and the location of the appropriate documentation in EAS.

(3) Other supporting documentation, such as receipts, order confirmations, vendor invoices (if provided), necessary expense justifications (see 13.3.1.12 above) or documentation of any problems, disputes, or unusual circumstances surrounding an order shall be kept in the purchase card file and uploaded to CitiManager. All supporting documentation shall be retained for at least 3 years on a fiscal year basis. Superfund-related purchases may require permanent retention for cost recovery purposes.

(4) The PCT will not grant any waivers to the requirement to use CitiManager.

(5) CHs must retain their certificate of appointment and proof of training completion.

(j) *Agency Printing Officer Interpretation of Applicable Types of Printing*

Processes/Products

The Agency Printing Officer interprets the Government Printing and Binding Regulations to include guidelines that the term “printing” as used in these regulations shall be construed to include and apply to the processes of composition, platemaking, presswork, binding, and microform; the equipment used in such processes; or the end items produced by such processes and equipment. The Agency Printing Officer interprets these regulations to include, but not limited to, any printing/photocopying services of any image transferred to paper, plastic/vinyl; black and white copying; digital black and white copying; color copying; digital color copying; CD/DVD duplication; graphic design services; journal reprints/page charges/open access fees; and finishing services such as binding. Printing excludes off-the-shelf publications purchased for Agency use, such as books, magazines, manuals accompanying equipment and supplies, etc., which have been produced by commercial entities and regularly carried as in-stock items

13.3.1.15 Financial Issues Related to Purchase Card.

(a) *Purchase Card Funding and the FCO.* Before placing orders, CHs must coordinate with their FCO to ensure funds are available.

(b) *E-mail Transaction Notifications of Billing.* On a daily basis, the contractor bank notifies CFC of purchase card transactions billed to CH accounts. CFC then issues an e-mail notifying the CH and AO that a transaction is awaiting cost allocation or payment. The CH should obtain third party verification of receipt and cost allocate immediately. The E-mail transaction notices will continue until cost allocation is completed.

(c) *Cost Allocation (Payment).* CHs are responsible for cost allocating their purchases. All CHs shall use the Agency’s Intranet cost allocation system to cost allocate (pay) for their purchases. The system can be accessed at: https://ocfosystem5.epa.cgipdc.net/ords/fmc2/card.card_welcome
With the exception of items where advance payment is allowed by Agency or Federal regulation, CHs shall not cost allocate if all the items charged have not been received. If a vendor bills for an order after the CH has left the Agency, the AO may contact CFC for assistance with cost allocation.

(d) *Partial, Delayed, or Back Orders.*

(1) The cost allocation system does not allow CHs to make partial payments. CHs must pay the total amount billed or not pay the bill at all. Per the terms of the agreement with the credit card company, vendors shall not submit a bill unless all items ordered are shipped. CHs shall not pay the vendor before receiving all the items for which the vendor is billing.

(2) If a vendor does not deliver all items ordered, but bills for all of them, the CH should call the vendor to resolve the issue. The vendor should issue a credit for items not shipped. If the vendor does not respond in a timely manner, dispute the charge through the contractor bank.

(e) *Purchase Card as a Payment Tool.*

(1) Acquisition professionals are encouraged to use the purchase card to place orders and to pay for

purchases against contracts established under FAR Part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor. See FAR 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

(2) The CH and the AO can help eliminate waste, fraud and abuse in EPA's purchase card program by preventing payment errors by checking the System for Award Management (SAM) database for applicable transactions. Pursuant to the following FAR requirements, by checking SAM before making payments or awards, the CH and AO can identify ineligible recipients and prevent certain improper payment from being made.

(i) FAR 4.1102(a)(1) "Prospective contractors shall be registered in the SAM database prior to award of a contract or agreement, except for purchases under the micro-purchase threshold that use a government-wide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card for payment only."

(ii) FAR 13.301(b) "Agency procedures should encourage use of the purchase card in greater dollar amounts by COs to place orders and to pay for purchases against contracts established under FAR Part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor."

(iii) FAR 13.301(c)(3) "The government-wide commercial purchase card may be used to make payments, when the contractor agrees to accept payment by the card."

(iv) FAR 32.1108 specifies the requirements pertaining to payment by Government wide purchase card.

(f) *The Dispute Process.*

(1) Typically disputes occur because the item was not received, is defective, or the charge is unauthorized or duplicative. Before initiating a dispute through the contractor bank, CHs shall contact the vendor in question and attempt to resolve the issue either by obtaining a replacement item or credit where appropriate. If the CH cannot resolve the issue with the vendor, then the CH shall contact CFC for assistance in processing a dispute through the contractor bank.

(2) Steps for resolving a dispute through the contractor bank are posted on the Purchase card Web Page, and are attached to the CFC transaction notice e-mail. Neither shipping, sales tax, nor convenience check charges can be disputed through the contractor bank.

(3) After 60 days from the date of the first transaction notice, charges can no longer be disputed through the contractor bank and must be paid. Accordingly, it is imperative that CHs and AOs pay or dispute promptly.

(g) *Refund from Contractor Bank.* The contractor bank gives the Agency a quarterly payment performance-based refund on the basis of net charge volume. The faster the CH cost allocates, the faster the Agency pays and the more refund the Agency earns. Once the refund is received, CFC

distributes the funds to each AAship or region based on the volume of purchases.

(h) *Checks Received by Cardholder.*

(1) While it is the Agency's standard practice to request that vendors issue a credit to the purchase CHs account or in the case of a rebate, to ask for a commensurate price reduction, an exception to this rule is sometimes warranted.

(2) When a vendor offers a rebate check for a purchase, the CH must inform the vendor to make the check payable to U.S. EPA and then send it to the CH. The CH includes the following information with the check:

(i) Cardholder's name;

(ii) Vendor's name;

(iii) Transaction number from EPA's credit card transaction review page; and

(iv) Document control number (DCN) – 10 digits (if previously cost allocated).

(3) The address where the cardholder should mail checks to is:

U.S. Environmental Protection Agency
Miscellaneous Payments
Cincinnati Finance Center
PO BOX 979078
St. Louis, MO 63197-9000

(4) If a vendor issues a refund check in lieu of posting a credit to the CHs account, the check must also be issued to U.S. EPA. If, by some oversight, the check is made payable to the CH, the CH shall endorse the check, making it payable to U.S. EPA and send it to the address above.

13.3.1.16 Oversight of the Purchase Card Program.

(a) Oversight of the Purchase Card Program is accomplished on two levels: individual and organizational. Oversight of individual transactions ensures the card is used appropriately and items being acquired are authorized. Organizational oversight helps analyze spending data, systemic problems and vulnerabilities as well as fraud, waste, or mismanagement. Consistent and vigilant oversight is the responsibility of everyone involved in the program.

(b) EPA developed an Intranet web-based purchase card transaction review page that electronically captures all purchase card transactions. The purchase card transaction review page is available to the purchase card community to perform oversight of CH transactions. CHs, FCOs, and AOs can review the activity of each CH over a chosen time frame to ensure the CH has correctly reconciled the funding for transactions and cost allocated them. FCOs and AOs have access to valuable transaction data to help facilitate budget decisions and identify problems with CH purchasing activity. All activity is

captured on this page and detailed reports are available on purchase card transactions. The transaction review page can be accessed at: <http://purchasecard.epa.gov/node/126>.

(c) *Cardholder Oversight.* CHs play a vital role in ensuring the card is properly used. Before placing orders, CHs must evaluate each purchase request to ensure that the requirement complies with federal and Agency acquisition and appropriation rules. CHs should discuss any inappropriate or questionable requests with the originator. If concerns or doubts still remain, the CH must raise the issue with their AO, the PCT, or other official, as appropriate.

(d) *AO Oversight.*

(1) AOs are responsible for conducting personal and detailed reviews of their CHs transactions to ensure compliance with all applicable regulations, policy, special approvals, and purchase card procedures. This includes, but is not limited to, preapprovals for orders, review of transaction notices from CFC, and review of purchase card logs, and transaction reports. AOs shall review and approve CH transactions no later than the 23rd of the month. The AO's signature denotes the AO has reviewed and approved the listed transactions.

(2) Once a year AOs must conduct a transaction volume analysis of their CHs to ascertain whether all cards under their account are needed, and whether, based on order volume, more CHs are needed or if existing CHs monthly limits should be adjusted.

(3) Once a year AOs shall submit an Annual Assurance Memorandum (AAM) to their cognizant OAS Division Director or Regional Acquisition Managers (RAM). The list of servicing OAS DDs and RAMs can be found [here](#). In the AAM, the AO will certify that they have adhered to their roles and responsibilities delegated to them in the purchase card program. A sample AAM can be found [here](#).

(e) *Program Office Oversight.* Program organizations (AAship, region or office) shall conduct a review specific to the organization to ensure compliance with Agency and federal policies in accordance with the Agency P/C SOP and the AAM cited above in 13.3.1.15(d)(3). The review must be performed at the AO level to emphasize the importance of AOs and their associated responsibilities.

(f) *OAS Oversight.*

(1) OAS will perform purchase card oversight as part of its Performance Measurement and Management Program (PMMP) and Contract Management and Assessment Program (CMAP). OAS oversight involves internal reviews as part of organizational self-assessments and CMAP peer reviews. Internal reviews will be conducted by OAS DDs and RAMs. CMAP peer reviews will be conducted by the OAS Policy, Training, and Oversight Division (PTOD).

(2) Upon receipt of an AAM, the OAS DD or RAM will conduct internal reviews and provide the Director of OAS with an annual self-assessment report.

(3) The CMAP peer review team will review all OAS Divisions and Regional contracting offices on a 3-year cycle to verify and validate their internal control plans to ensure compliance with all purchase card policies and procedures.

(g) Purchase Card Team (PCT) Oversight.

(1) The PCT is responsible for the overall implementation, quality, and consistency of the purchase card program. The PCT regularly reviews individual CH transaction reports. Periodically, the PCT will conduct Agency-wide reviews to determine general trends and identify systemic issues.

(2) As a part of their oversight responsibility, the PCT will notify affected parties and cancel or suspend any account when the PCT determines the CH or AO (as appropriate):

(i) Continuously fails to follow Agency or federal acquisition and purchase card policies;

(ii) Does not properly safeguard the card, convenience checks, or account number;

(iii) Uses the card for personal, unapproved or unauthorized purposes;

(iv) Fails to respond to inquiries from the PCT or CFC;

(v) Fails to reconcile, cost allocate, or dispute charges within 30 days from initial CFC transaction notice (e-mail); or

(vi) Does not use the card for a period of 12 months or more.

(h) Oversight from Other Organizations.

(1) The Cincinnati Finance Center (CFC) or Funds Control Officers (FCOs) may review purchase card transactions and any supporting documentation as deemed necessary for compliance with Agency fiscal policy.

(2) The Agency Office of General Counsel (OGC), Civil Rights and Finance Law Office, is available to assist CH with questions about the propriety of a particular purchase as a necessary expense of appropriated funds. The OGC Ethics Program will also assist with ethics-related questions. Other organizations, such as the Office of Inspector General (OIG), Government Accountability Office (GAO), or Office of Management and Budget (OMB) may be involved in purchase card oversight. The PCT will work with these organizations to ensure that information is shared, irregularities are identified and investigated, fraud and abuse are eliminated or prosecuted, and that suggested program enhancements in the oversight area are jointly discussed regarding their development and implementation.

(3) Complaints of fraud, waste, and abuse, including mismanagement or violations of law, rules, or regulations in EPA programs and operations by EPA employees or program participants may be reported to the OIG as follows:

- (i) Toll-free, nationwide hotline at 1-888-546-8740;
- (ii) Faxed to (202) 566-2599;
- (iii) E-mailed to OIG_Hotline@epa.gov; or
- (iv) Via the Internet at <https://www.epa.gov/oig/ombudsman-hotline/how2file.htm>.

(i) *Consequences for Misuse of the Purchase Card.*

(1) If any employee knowingly uses the card for unapproved or unofficial purposes, such action will be considered as an attempt to commit fraud against the U.S. Government. This action may result in immediate suspension or cancellation of the card and further disciplinary action against the CH under applicable Agency administrative procedures or law.

(2) CHs and AOs who violate applicable laws, rules, or regulations or advise or order a subordinate to violate these rules may be subject to Agency's conduct and discipline policy and procedures. Potential disciplinary actions, notwithstanding the outcome of any applicable criminal proceedings, range from oral admonishment, written warning, reprimand, to suspension or removal. For more details, see the Agency's Conduct and Discipline Manual at <http://intranet.epa.gov/ohr/rmpolicy/ads/cadm/html/>

(3) The CH is held personally liable to the government for the amount of any unapproved purchases and may be subject to a fine of not more than \$10,000 or imprisonment for not more than five (5) years or both under 18 U.S.C. 287, False Claims, and related fraud criminal codes.

13.3.1.17 The Government Charge Card Abuse Prevention Act and Timely Filing of a Dispute to the Contractor Bank.

(a) *The Government Charge Card Abuse Prevention Act.*

(1) On October 5, 2012, the President signed into law the Government Charge Card Abuse Prevention Act of 2012 (Pub. L. 112-194) (Charge Card Act), to reinforce the Administration's efforts to prevent waste, fraud, and abuse of government-wide charge card programs.

(2) Consistent with the existing requirements contained in the Charge Card Act and 13.3.1.16(i), any employee who knowingly uses the purchase card or convenience check for unapproved or unofficial purposes will be considered to have committed fraud against the U.S. Government. Such an action shall result in immediate suspension or cancellation of the purchase card account. In addition, disciplinary action will be taken against the CH in accordance with applicable Agency administrative procedures, government regulations and/or federal law.

(3) CHs and AOs who violate applicable laws, rules, regulations, or Agency administrative procedures or who advise or order a subordinate to violate them will be subject to the Agency's conduct and discipline policy and procedures. Potential disciplinary actions, notwithstanding the outcome of any applicable criminal proceedings, will range from an oral admonishment, a written

warning, or a reprimand, to suspension or removal of the CH or AO. For more details, see the Agency's Conduct and Discipline Manual at: <http://intranet.epa.gov/ohr/rmpolicy/ads/cadm/html/>.

(4) The CH and/or the AO will be held personally liable to the government for the amount of any unapproved or improper purchases. In addition, the CH and/or the AO may be subject to a fine of not more than \$10,000 or imprisonment for not more than five (5) years or both under 18 U.S.C. 287, False Claims, and other related federal criminal fraud law.

(b) Timely Filing of a Dispute to the Contractor Bank.

(1) Disputes typically occur because an item was not received, is defective, or the charge is unauthorized or duplicative. Although the CH should contact the vendor first to attempt to resolve the dispute, the CH only has 60 days from the date of the first transaction notice to dispute a charge through the contractor bank. Therefore when necessary, it is imperative that the CH and AO dispute charges promptly.

(2) As prescribed in Chapter 4, Section 4.8 of the Office of Management and Budget (OMB) Circular No. A-123, Appendix B, *Improving the Management of Government Charge Card Programs*, in cases wherein a CH fails to resolve and/or timely dispute an erroneous charge, the CH, AO, or both, shall reimburse the government for the cost of the transaction in accordance with EPA policy and procedures. In addition, when a cardholder makes an improper purchase, the CH shall, in accordance with Agency policy:

(i) reimburse the government for the cost of the purchase; and

(ii) be subject to disciplinary action.

(3) In those instances where an official directs a CH and/or AO to make an erroneous purchase or directs a CH and/or AO to purchase items or services that are subsequently determined to be improper, the official who directed the purchase shall, in accordance with Agency policy:

(i) reimburse the government for the cost of the purchase; and

(ii) be subject to disciplinary action.

Subsection 13.3.2 -Purchase Order Payment Responsibilities (July 2017)

13.3.2.1 Purpose.

This subsection summarizes roles and responsibilities for contracting officers (COs), purchasing agents (PAs), and the program office supply/service recipients.

13.3.2.2 Background.

Environmental Protection Agency (EPA) finance offices need assistance in obtaining the information necessary to approve contractor invoices for purchase orders. This information is crucial for EPA to make timely invoice payments to comply with the Prompt Payment Act, and to avoid interest charges to the Government. The program office supply/service recipient is instrumental in providing this information, since only he/she has the technical expertise to determine whether the goods and/or services being delivered are acceptable to the Government.

13.3.2.3 Authority/Applicability.

Federal Acquisition Regulation (FAR) [Subpart 32.9, Prompt Payment](#), and [Subpart 46.5, Acceptance](#).

13.3.2.4 Definitions [Reserved].

13.3.2.5 Policy.

This policy is intended to assist EPA finance offices by ensuring they receive the documentation needed to approve contractor invoices for purchase orders ([FAR 13.302](#)). It does not apply to other simplified acquisition methods specified under FAR [Subpart 13.3](#) (e.g., purchase card transactions).

13.3.2.5.1 Roles and Responsibilities

- (a) The CO or PA must ensure that document distribution is made in accordance with local procedures. The finance office must receive the signed order no later than four business days after award, and electronic submission is acceptable (e.g., PDF files sent via email).
- (b) The program office supply/service recipient (designated in block 8 of the EPA Form 1900-8 procurement request/order (Requisition)) must:
 - (1) Receive goods and/or services;
 - (2) Review invoice(s) for accuracy;
 - (3) Approve invoice(s) promptly unless there are discrepancies between invoice(s) and deliverables (*see paragraph (e) below for instance where another party approves the invoice*);

- (4) Resolve any discrepancies promptly with the contractor; and
 - (5) Contact the responsible CO or PA if any discrepancies cannot be resolved in a timely manner.
- (c) The CO or PA must work with the program office making the purchase request to ensure that a program office supply/service recipient is specified in block 8 of the Form 1900-8.
- (d) The CO or PA must provide prompt assistance if the program office supply/service recipient requests assistance in resolving an issue that is preventing program office supply/service recipient approval of an invoice for payment.
- (e) Program office recipients that are not authorized as a Contracting Officer's Representative (COR) may, instead of approving the invoice as required in (a)(3) above, provide written concurrence of product/service acceptance to the CO or COR so that he or she can promptly approve the invoice.

Subsection 13.3.3 - Blanket Purchase Agreements (April 2008)

This subsection was previously Section 13.1 of the Contracts Management Manual.

13.3.3.1 Purpose.

A blanket purchase agreement (BPA) is used to purchase commercial services or supplies within a specific class, when it is not possible to determine with certainty the quantity needed or the desired delivery date. The quantity and or delivery date may vary for BPA orders.

13.3.3.2 Background.

This subsection establishes policies and procedures for the use of a BPA.

13.3.3.3 Authority/Applicability.

Part 13.303 of the Federal Acquisition Regulation (FAR) provides Federal authority for establishing BPA (s).

13.3.3.4 Definitions.

A BPA is defined in FAR Subpart 13.303-1(a) as a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply.

13.3.3.5 Policy.

13.3.3.5.1 Conditions for Use

- (a) A contracting officer may establish a BPA if one or more of the circumstances in FAR 13.303-2 (a) exist. Individual orders placed under a BPA shall not exceed the simplified acquisition threshold, unless authorized in an EPA acquisition regulation and permissible under Subpart 13.303-5 (b).
- (b) Orders placed under a BPA shall not exceed a contracting officer’s warrant authority or the ordering ceiling cited in the BPA.
- (c) BPA(s) should be processed in the Small Purchase Electronic Data Interchange or the Integrated Contracts Management System, depending on the anticipated type and value of individual orders placed under the BPA.

13.3.3.5.2 Format for BPA

The contracting officer shall determine a format for each BPA. The format shall include the mandatory terms and conditions as specified in FAR 13.303-3(a).

13.3.3.5.3 Authorized BPA Ordering Officers and Orders

- (a) Only the persons identified by name or title of position in the BPA are authorized to place orders. Such persons are known as call ordering officers.

(1) BPA call ordering officers have authority to place calls or orders under the designated BPA.

(2) Authority to place orders up to the micro-purchase threshold on a specific BPA is delegated in writing by the cognizant contracting officer. Authority to place orders above the micro-purchase threshold shall be delegated by the appropriate appointing official as specified in Chapter 1.

(3) Ordering officer(s) will receive an appointment memorandum that identifies the specific BPA for which authority is granted; and outlines the duties and responsibilities of the call ordering officer, from the cognizant CO or appointing official. The appointment memorandum is processed through OAM's Federal Acquisition Certification, Warrants, and BPA Database. A sample appointment memorandum is provided as an Appendix in Chapter 1. The sample memorandum may be modified or tailored to meet each specific situation. The call ordering officer(s) should also be listed in the BPA itself.

(4) The cognizant CO is responsible for reviewing this memorandum in detail with the Ordering Officer. A thorough review includes the ordering officer's and CO's responsibilities and ordering procedures. This briefing must take place before the call ordering officer issues any orders.

(5) The combination of the appointment memorandum and the briefing provided by the CO fulfills the training requirement for call ordering officers.

(b) All orders placed under a BPA must be numbered sequentially (e.g., BPA number followed by 01 for the first call placed). When placing an order, the BPA number, items needed, unit price and total price, and time and place of delivery should be specified.

13.3.3.5.4 Price Reasonableness

Reasonableness of the price for each item is determined by the ordering official prior to placing the order. The ordering official shall verify that mandatory sources are not available for a particular item prior to placing a BPA order. Reference FAR 13.303-5 (d) for individual orders greater than the micro-purchase threshold.

13.3.3.6 Procedures.

(a) BPA obligations are incurred upon placing a BPA order in a specified amount. The ordering official shall use EPA Form 1900-63, Monthly Requisition and/or Receiving Report for Blanket Purchase Order Calls to record all BPA orders. The ordering official shall record orders through the 24th day of each month. If orders are placed between September 25th and September 30th, a separate EPA Form 1900-63 must be prepared for this 6-day period to ensure that all obligations for the entire fiscal year are recorded. The ordering official and the receiving official must sign EPA Form 1900-63. One person shall not sign in both capacities.

(b) Ordering officials must ensure that sufficient funding commitments are made to cover BPA orders. Orders shall not be placed which exceed committed funds. The ordering official shall cite appropriate accounting and appropriation data for the obligations reported on EPA Form 1900-63. The monthly obligations reported must equal the total value of all orders reported in the particular month, inclusive of any adjustments. The ordering official should maintain an informal log to

ensure that the BPA does not exceed its value. This informal log may include a cumulative list of order numbers, the date of the orders, and the amount obligated for each BPA.

Subsection 13.3.100 – Procurement of Novelty Items for Distribution to the Public and/or to Federal Employees (January 2009)

This subsection was previously Section 13.2 of the Contracts Management Manual.

13.3.100.1 Purpose.

This policy provides guidance and frequently asked questions regarding novelty item purchases. Additionally, this policy assists those engaged in contracting activities in the proper documentation of procurement requests for novelty items.

13.3.100.2 Background.

Questions frequently arise concerning the procurement of small objects and souvenirs (collectively referred to as “novelty items”) for distribution to the general public and/or to federal employees. The purchase of novelty items must be based on the “necessary expense” rule. This is a rule of appropriations law which states that an expenditure not specifically provided for in an agency’s appropriation is permissible only if it is reasonably necessary to carry out an authorized function of an agency, or will contribute materially to the effective accomplishment of an agency’s function, and is not otherwise prohibited by law.

Under the “necessary expense” rule, EPA may not purchase novelty items unless the Agency program office documents that the distribution of novelty items will directly further the program offices mission. To establish a direct link to the Agency’s mission, a novelty item must be imprinted with Agency information. Agency information is typically an environmental message, the Agency program offices URL (or informational telephone number), or both. Imprinting a novelty item with only the EPA seal or Agency Identifier without additional Agency information is insufficient.

Even if a novelty item has Agency information imprinted on it, the program office must document that the Agency information contained on the novelty item outweighs the item’s relatively insignificant utility and cost. Generally, the higher the cost of an item and/or the greater its utility, apart from any message or information contained on the item, the more likely the impropriety of the expenditure. Please note that items with a unit acquisition cost of \$2.00 or less are considered inexpensive and are presumed to have insignificant utility unless the item is on the list of prohibited novelty items.

EPA has determined, as a matter of policy, that novelty items with a unit acquisition cost of \$2.00 or less have minimal utility and, therefore, meet the “necessary expense” test, if imprinted with Agency information and are not on the list of prohibited novelty items specified in 13.3.100.5.3 or as otherwise prohibited by law.

This policy was originally issued as Procurement Policy Notice (PPN) 95-01 dated April 10, 1995, from Betty L. Bailey, Director of the Office of Acquisition Management, to OAM Division Directors, Regional Contracting Officer Supervisors, and Ray Spears, OGC.

13.3.100.3 Authority/Applicability.

This policy addresses the purchase of novelty items to be distributed to the general public and/or to federal employees. It applies to contracting officers and purchase card holders.

The authority for this policy is 31 U.S.C. 1301(a) and the “necessary expense” rule of appropriations law. Among others, Section 6604(b) of the Pollution Prevention Act, 42 U.S.C. 13103(b), Sections 6002 and 8001 of the Solid Waste Disposal Act, 42 U.S.C. 6962 and 6981, respectively, and the National Environmental Policy Act, 42 U.S.C. 4332(2)(G), authorize EPA to use appropriated funds to provide useful environmental information to the public and federal employees in a manner that reduces sources of pollution and minimizes waste.

Appropriated funds may be used to purchase items (such as T-shirts, plaques, and portfolios with the EPA logo) for use as informal non-monetary awards for federal employees under the Government Employees Incentive Awards Act. However, those purchases are outside the scope of this policy. Please consult EPA's Recognition Policy and Procedures Manual (<http://intranet.epa.gov/ohr/rmpolicy/ads/manuals/3130-A2.pdf>) for information on non-monetary awards.

Similarly, the Agency has explicit or implicit authority under several statutes to promote environmental protection and use appropriated funds to purchase award items that recognize the stewardship achievements of non-federal entities. Those purchases are also outside the scope of this policy. Please consult with the Office of General Counsel on questions relating to EPA's environmental award statutes.

13.3.100.4 Definitions.

Green Novelty Item- A novelty item produced, distributed or used in an environmentally and ecologically friendly way (e.g., by using renewable resources or minimizing discarded waste).

Insignificant Utility - A novelty item having minimal or no personal usefulness.

Necessary Expense Rule – A rule of appropriations law which states that an expenditure not specifically provided for in an agency's appropriation is permissible only if it is reasonably necessary to carry out an authorized function of the agency, or will contribute materially to the effective accomplishment of an agency's function, and is not otherwise prohibited by law.

Novelty Item - A small, mass-produced object or souvenir of nominal value that is primarily used for outreach and educational purposes.

13.3.100.5 Policy.

13.3.100.5.1 General Policy

Contracting officers (COs) or any other authorized purchasers may, under certain circumstances,

purchase novelty items for distribution to the public and/or to federal employees. The novelty item must convey an environmental message consistent with an environmental statute. To do this, a novelty item must be imprinted with Agency information, typically an environmental message and/or a program offices URL (or information telephone number). Imprinting a novelty item with only the EPA seal or Agency Identifier without additional Agency information is insufficient. The purchase must be supported by the "necessary expense" rule.

The novelty item must be relatively inexpensive and have insignificant utility. Items with a unit acquisition cost of \$2.00 or less (including the pro-rated shipping cost and the production/printing cost) are presumed to have insignificant utility and cost. Novelty items with a unit acquisition cost of \$2.00 or less, however, must not be on the list of prohibited items. For a list of prohibited novelty items, see Section 13.3.100.5.3.

13.3.100.5.2 “Green” Novelty items

If an item’s cost is more than \$2.00, but less than \$6.00, and an item has some utility, a program office may be able to demonstrate that tangible benefits for source reduction under the Pollution Prevention Act or RCRA 8001 if waste minimization or preference for recovered materials will be achieved through the purchase of the particular items. A program office may also be able to demonstrate that a novelty item is a component of a broader effort to promote source reduction practices by businesses or other federal agencies. These environmental considerations may overcome what otherwise may be an item’s relatively high cost and utility. Under these circumstances, the \$2.00 per item limitation on novelty items can be waived unless the item is on the prohibited items list.

13.3.100.5.3 Prohibited Items

The list below provides examples of items which EPA finds possess a high cost and/or significant utility, apart from any message or information conveyed or are prohibited by statute (i.e., food). Purchase of the items listed below for distribution to the general public or federal employees is prohibited.

Examples include, but are not limited to the following:

- Toys (e.g. Frisbees, hacky sacs), unless the toy primarily functions as an educational/experimental tool (see 13.3.100.5.6 (1)(C)).
- Wearing Apparel (T-shirts, Scarves, Caps, Jackets, etc.)
- Umbrellas
- Golf Balls
- Candy and other food items
- Tote Bags *

* See the discussion at 13.3.100.5.5

In the absence of statutory authority to promote products such as Energy Star Legislation, EPA may not distribute novelty items that endorse the purchase or sale of commercial products.

13.3.100.5.4 Items Which May Be Appropriate

The list below provides examples of novelty items which may be purchased and distributed to the general public and to federal employees. A novelty item must be imprinted with Agency information, typically an environmental message, the Agency program office's URL (or information telephone number), or both. Imprinting a novelty item with only the EPA seal or Agency Identifier without additional Agency information is insufficient. If the unit acquisition cost of the item is \$2.00 or less, or \$6.00 or less for a green item (see 13.3.100.5.2) the item is presumed to meet the "necessary expense" test, unless it is a prohibited item (see 13.3.100.5.3).

Examples of items which may be appropriate include, but are not limited to, the following:

- Pens
- Pins
- Pencils
- Magnets
- Posters
- Buttons
- Signs
- Bumper Stickers
- Key Chains
- Water Bottles
- Plastic Cups
- Coffee Mugs Ceramic or Glass
- Drinking Glasses

13.3.100.5.5 Exceptions

The Agency can purchase an item if authorized by statute. For example, the Government Employees' Training Act (GETA) authorizes the use of appropriated funds "for the necessary expenses of the training." EPA also has authority under section 103 of the Clean Air Act, section 104 of the Clean Water Act, section 8001 of the Solid Waste Disposal Act and section 104(k)(6) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to provide training to the public. Therefore, GETA or an environmental statute authorizing training could serve as authority to purchase inexpensive or moderately priced tote bags. **The price of a tote bag must not exceed \$10.00 per bag and the tote bags must be needed to carry cumbersome or heavy conference training materials to, from, and at the training session(s) locations(s).** The acquisition procedures at 13.3.100.5.6 must also be met.

Novelty items that are prohibited under 13.3.100.5.3 may qualify as Agency informal recognition awards for Federal employees if the standards in EPA's Recognition Policy and Procedures Manual (<http://intranet.epa.gov/ohr/rmpolicy/ads/manuals/3130-A2.pdf>) are met.

EPA may have statutory authority to use appropriated funds to purchase items that recognize environmental achievements of non-Federal individuals and organizations. You may contact the Office of General Counsel or the Office of Regional Counsel for further guidance.

13.3.100.5.6 Acquisition Procedures

(a) **Requesting Office:**

(1) The requesting office must describe the outreach or educational purpose that will be served by acquiring the items. In providing this information, the program office shall provide the information that will be imprinted on each item and the expected cost per item including shipping and production or printing costs. Note that for a tote bag purchased under GETA or an environmental training statue, it is not necessary to have information printed on the tote bag, but the unit cost must be \$10.00 or less;

(2) If the requesting office is invoking the “green” item waiver on item ceiling price (i.e., more than \$2.00 per item, but less than \$6.00 per item), the requesting office must document why the items being purchased are “green” items (see 13.3.100.5.2.);

(3) If the requesting office intends to purchase a toy item that functions as an educational/experimental tool, the office must document how the item is being used as an educational/experimental tool and how the item’s use as an educational/experimental tool is the item’s primary use. The principal purpose for purchasing a toy item must be to use the toy as an educational/experimental tool and not claim that a toy with an agency message imprinted on it primarily functions as an educational tool because of the environmental message. For example, the Sunwise Frisbee is a Frisbee that changes color when exposed to UV radiation. This Frisbee itself has an educational/experimental use other than as a Frisbee. If the Sunwise Frisbee was a regular Frisbee with the just an environmental message imprinted on it, its purchase would be prohibited as a matter of policy.

(b) **COs Or Other Authorized Purchasers:**

(1) Consider the FAR 8.002, Priorities for use of Government supply sources, before using a commercial vendor;

(2) Obtain approval through the EPA Communications Product Review process:
http://otaqintranet.epa.gov/index.php?option=com_content&view=article&id=212&Itemid=269#_ga=1.253209356.448039515.1434475133

(3) Document the official contract or purchase order file with the information that substantiates the acquisition of the novelty items;

(4) Use discretion concerning items which are not addressed in this policy. COs or any other authorized purchasers must consult the Office of General Counsel on the propriety of procuring questionable items.

(5) Novelty items need not undergo a separate review (outside of that required by 13.3.100.5.6 (A)), for the imprint on the novelty item. Imprinting on three dimensional novelty items may be done by the local printing office or Government Printing Office (GPO) sources, but this is not a requirement. For further guidance on printing, please see the Office of Public Affairs (OPA) guidance Promotional Communications for EPA, dated July 2008. If you are uncertain whether a production method would constitute printing that must be referred to the EPA Printing Management Office to be done in-house or through GPO, you should contact the EPA Printing Management Office for further information.

Subsection 13.3.200 - Procurement of Recreational Items for EPA Employees (August 2007)

This subsection was previously Section 13.5 of the Contracts Management Manual.

13.3.200.1 Purpose.

This policy provides guidance regarding the purchase of recreational items for EPA employees in remote locations and the workplace.

13.3.200.2 Background.

This policy is issued to provide guidance in determining:

- (a) situations in which the procurement of recreational items may be acceptable, and
- (b) the criteria for determining the acceptability of a recreational item purchase.

EPA does not have specific statutory authority to use appropriated funds for welfare and recreation. Therefore, the Agency can only purchase recreational items for EPA employees under the “necessary expense” test of appropriations law. This is a rule of appropriations law which states that an expenditure not specifically provided for in an agency’s appropriation is permissible only if it is reasonably necessary to carry out an authorized function of an agency, or will contribute materially to the effective accomplishment of an agency’s function, and is not otherwise prohibited by law.

13.3.200.3 Authority/Applicability.

The Purpose Statute at 31 U.S.C. 1301(a) requires that an agency use appropriations only for the purposes for which Congress provides. The Government Accountability Office (GAO) has applied the “necessary expense” test of appropriations law in cases that may serve as guidance regarding the purchase of recreational items for both remote locations and the workplace. The GAO balances the “necessary expense” test with an agency’s need to promote the morale and productivity of its employees. The GAO’s decisions are made on a case-by-case basis, and strictly interpret Congressional intent.

13.3.200.4 Definitions.

Extended Period - Three weeks or more.

Recreational Items - Items deemed appropriate (on a case-by-case basis) by the Program Office and the Office of General Counsel for use by EPA employees at remote locations and/or the workplace.

Remote Location - A location that is geographically isolated, and not permanently staffed by EPA personnel. Examples of remote locations could be an island; an area where

recreational facilities or services are not available due to forces of nature (hurricanes, earthquakes, tsunamis); a federally designated wilderness area; Agency-owned ocean- or lake-going vessels (for use when not in port) and/or an area where no local recreational facilities or services are available within 50 miles of the location.

Workplace - A permanent duty station where EPA employees perform work.

13.3.200.5 Policy.

13.3.200.5.1 Purchase of Recreational Items (In General)

- (a) The Program Office initiating a request must consult with the Office of General Counsel, with the exception of the Office of the Inspector General (OIG). If the Program Office subsequently proceeds with the acquisition, they must adhere to the procedures specified in EPAAG 13.3.200.5.4.
- (b) The recreational item(s) must be located in a common area accessible to all employees.
- (c) Recreational items purchased with appropriated funds are EPA property; rented items are not EPA property and must be returned to the vendor in accordance with the rental terms. EPA property must be recorded and tracked for accountability purposes.
- (d) Small business concerns shall be solicited for acquisition of these items to the maximum extent practicable.

13.3.200.5.2 Recreational Item Purchases for Remote Locations

Contracting officers (COs) or any other authorized purchasers may, on a case-by-case basis, purchase recreational items for EPA employees provided that:

- (a) EPA employees are or will be working for an extended period at a remote location and do not have ready access to personal or commercial recreational items, and
- (b) there will be a “direct relationship” between the purchase of recreational items and the employees' effective performance of authorized Agency functions. The fact that a location is remote is not sufficient in and of itself. The Program Office must also demonstrate that the acquisition will directly contribute to enhancing the employees' effective performance of their work at the remote location.

13.3.200.5.2.1 Direct Relationship Test

To meet the “direct relationship” test, the Program Office must demonstrate that:

- (a) the acquisition of a recreational item is intended to alleviate the effects of existing adverse working conditions. These conditions arise if the expected stay of employees

will be for an extended period under isolated conditions that make it very difficult to recruit, retain and replace employees for a remote assignment; and

- (b) once the program makes the connection between a recreational item and the alleviation of adverse working conditions, it must then show that the recreational item will contribute to the efficiency of the employees' performance.
- (c) if an item is expected to alleviate the affects of adverse working conditions, the program should then be able to demonstrate that the item will have a positive impact on the employees' efficiency of performance. For example, employees may be more willing to accept an assignment in a remote location and they may be less inclined to leave the remote location to seek recreational activities—all leading to increased productivity and efficient performance.

13.3.200.5.3 Recreational Item Purchases for the Workplace

- (a) Appropriated funds are available to pay for recreational items if the primary benefit of the expenditure accrues to an agency. GAO has determined that an agency may use appropriated funds for what otherwise are personal items, such as recreational items, if:
 - (1) employee productivity is increased - these items will contribute to the efficient operations of an agency and the health of personnel; and
 - (2) the recreational items are of a type that an employer is expected to provide in today's workplaces to meet the needs of employees.

13.3.200.5.4 Procedures and Required Steps Prior to Acquisition

- (a) Program Office personnel are required to prepare documentation and obtain approvals for the purchase of recreational items by:
 - (1) consultation with the appropriations law attorneys in the Office of General Counsel, OIG personnel must consult with the OIG Office of Counsel;
 - (2) approval by an Office Director, a Laboratory/Center/Office Director, a Division Director (in the Regions only), and the Director of the Office of Administration and Resources Management, Cincinnati or Research Triangle Park, OIG personnel must obtain approval from the Assistant Inspector General for Planning, Analysis, and Results; and
 - (3) concurrence of the facility manager (for workplace items).
- (b) COs or purchase cardholders must ensure that the acquisition is reasonable and that documentation supporting these actions is reasonable and is executed prior to acquisitions (purchase or rent) of recreational items.

Section 13.5 - Simplified Procedures for Certain Commercial Items

Subsection 13.5.1 Sole Source Justifications (January 2018)

13.5.1.1 Purpose.

This subsection establishes policy for drafting and approving sole source justifications.

13.5.1.2 Background.

This subsection clarifies the requirements for sole source justifications and sole source justifications for bridge vehicles.

13.5.1.3 Authority/Applicability.

This subsection is issued in accordance with FAR 1.301(a), and EPA Delegations Manual Chapter 1-2.

13.5.1.4 Definitions. [Reserved]

13.5.1.5 Policy.

Sole source justifications must be drafted in accordance with FAR 13.501 and approved in accordance with EPAAG 1.6.1-A, block 8, *Justifications that Limit Competition*.

Justifications for sole source bridge vehicles, as defined under EPAAG 6.3.1.4, must clearly be identified as "bridge" justifications, and contain the additional information required under EPAAG 6.3.1.5.2(i) through (v), as applicable. Bridge justifications must be approved in accordance with the *Bridge Justifications that Limit Competition* approval authorities contained in EPAAG 1.6.1-A, block 8.

CHAPTER 15 – CONTRACTING BY NEGOTIATION

Section 15.2 – Solicitation and Receipt of Proposals and Information

Subsection 15.2.1 - Safeguarding Bids and Proposals (TBD)

This subsection was previously Section 3.3 of the Contracts Management Manual.

15.2.1.1 Purpose.

This subsection establishes policy, procedures, and responsibilities for the proper physical control and safeguarding of contract bids and proposals submitted to the Environmental Protection Agency (EPA).

15.2.1.2 Background.

EPA routinely solicits data from prospective contractors for which a claim of confidentiality may be asserted. 40 CFR, Part 2, Subpart B, establishes the basic rules relating to the confidentiality of business information.

15.2.1.3 Authority/Applicability.

The authority for this subsection is 40 CFR, Part 2, subpart B.

This subsection applies to all EPA personnel who may gain access to contract bids, proposal, or information pertaining to contract proposals.

15.2.1.4 Definitions.

(a) Confidential Business Information (CBI) - In addition to EPAAG 3.1.1.4, [*19 U.S.C. 1677f\(b\)*](#) and CBI defined in the [EPA Information Security Manual](#), CBI includes all proposals and bids submitted to any of EPA's contracting activities, and data extracted from or pertaining to such proposals and bids.

- (1) Proposals are classified as CBI from the time of receipt at the contracting activity until the contract is awarded.
- (2) Sealed bids are classified as CBI from the time of receipt at the contracting activity until the time of bid opening.
- (3) Data contained in proposals for which the submitter has asserted a claim of confidentiality will be classified as privileged information from the time of receipt at the contracting activity and shall be protected until destruction of the data is authorized.

15.2.1.5 Policy.**15.2.1.5.1 Responsibilities**

- (a) The Office of Acquisition Solutions Director is responsible for ensuring that the security system for safeguarding CBI is established; that all EPA contracting activity employees and supervisors realize the importance of strict adherence to these policies; that a training program is developed; and that appropriate action is taken when there are violations of these procedures or compromise of CBI.
- (b) The Division Directors are responsible for establishing procedures in accordance with this subsection which effectively safeguard CBI and for ensuring that their subordinates who require access to CBI are properly instructed in the handling and storage of this material.
- (c) Contracting Officers/Contract Specialists (COs/CSs) are responsible for the security of bids and proposals submitted in response to their solicitations. See EPAAG Subsection 3.1.1 - Safeguarding Confidential Business Information for responsibilities of CO who receives or obtains information of a violation or possible violation of the Procurement Integrity Act (See [FAR 3.104-3](#)).
- (d) CORs are responsible for CBI in their custody for technical evaluation and contract monitoring purposes.
- (e) All other EPA employees are responsible for safeguarding any CBI coming into their possession and for disseminating such information only to those authorized to receive it.

15.2.1.5.2 Receipt of Bids/Proposals

In accordance with EPAAG 4.5.2 - FedConnect Use in EAS, FedConnect is the communications web portal for all non-exempted procurement actions over the micro-purchase threshold, and contracting officers may no longer require the submission of hard copies of proposals, bids, offers or quotes. This revised policy reflects EPA's commitment to reducing its carbon footprint and conducting its business in a more ecologically friendly manner. Inquiries regarding the procurement shall be referred to the contracting officer.

15.2.1.5.3 Opening of Bids/Proposals

Bids shall be read by the contracting officer/contract specialist and recorded on the bid abstract. The bids shall be serially numbered with the first bid read being assigned number 1 (one). The assigned number shall correspond with the identification number on the bid abstract.

15.2.1.5.4 Safeguarding Bids/Proposals After Opening

After sealed bids or competing proposals are opened, all practicable measures shall be taken to preclude the possibility of disclosure of information contained in proposals, or a substitution,

addition, deletion, or alteration in bids.

- (a) Sealed bids. Electronic copies of sealed bids shall be kept under the immediate supervision or control of an authorized person in the contracting activity at all times during the acquisition process and securely stored when not in use. After the contract has been awarded, the successful bid shall be included in the official contract file.
- (b) Competing proposals.
 - (1) If applicable the contracting officer/contract specialist will electronically separate the technical and business proposals and make appropriate distribution for evaluation. The contracting officer/contract specialist will ensure that technical and cost proposals are securely stored electronically.
 - (2) As provided in 15.2.1.5.2, offeror proposals will be submitted electronically via the FedConnect electronic web portal. Upon distributing any portion(s) of electronic proposals, the contracting officer/contract specialist shall ensure the panel members are made aware of the confidentiality or sensitivity of the material contained in the proposals, and the prohibition of any communication with anyone other than other panel members regarding the review process. Any questions on procedures or any clarifications needed by the panel shall be referred to the contracting officer/contract specialist.
 - (3) Panel members are not authorized to retain any proposal or to make copies of any of the material submitted by offerors.
 - (4) After contract award, a copy of the successful proposal shall be included in the official contract file and a copy will be furnished to the contract-level COR for monitoring the contract.
 - (5) All written documentation which contain references to material contained in proposals shall be safeguarded in accordance with procedures in this subsection, including pre-negotiation memoranda, recommendations of cost analysts and the panel chairperson, and any summaries of proposal information. Division directors shall ensure that electronic media that contain confidential proposal information are safeguarded in accordance with procedures in this subsection.
- (c) Sole-Source proposals. Sole-source proposals shall be handled with the same level of security as required by this subsection for competitive proposals.

15.2.1.5.5 Disposition of Unsuccessful Proposals

An electronic copy of each unsuccessful bid/proposal shall be retained in the contracts office for a minimum of 90 days after award. After 90 days, an electronic copy of all unsuccessful bids/proposals may be sent to the Federal Records Center except where claims, litigation or similar matters are in process.

15.2.1.5.6 Discussions with Offerors/Contractors

Negotiations done face-to-face will be conducted in areas that allows for confidential discussions.

The division directors shall approve conference rooms or other areas which will provide for secure discussions of confidential proposal information.

15.2.1.5.7 Other Security Measures

Each contracting office shall identify a visitors' conference room or area located away from the contract operations area. Visitors, including contractors and offerors, shall be required to register with the security guard and wait to be announced to the appropriate contracting office personnel. Contracting office personnel shall meet visitors in the visitor area or, when necessary, escort visitors to the contracts operations area. Contracting office personnel who permit visitor access to the contracting office operations area are responsible for ensuring that confidential and sensitive documents are protected from viewing by visitors while in the area.

Precautions shall be taken to ensure that access of on-site contractors to the contracts operations area is controlled. Agency personnel must take particular caution to ensure that on-site contractors do not have access to confidential, proprietary, or business sensitive information unless their contracts include clauses that authorize such access and provide for safeguards to protect the information.

Requests from the public for access to documents pursuant to the provisions of the Freedom of Information Act (FOIA), as amended (5 U.S.C. Section 552) shall be handled in accordance with the Agency's regulations at 40 CFR, Part 2 and EPA 1550 *Freedom of Information Manual* dated July 2015. FOIA requests from the public may be requested online at <https://foiaonline.regulations.gov/foia/action/public/home> .

15.2.1.5.8 Review of Procedures

An assessment of each contracting activity's compliance with the procedures in this subsection will be a part of the Office of Acquisition Solutions quality assurance review program.

Section 15.3 – Source Selection

Subsection 15.3.1 – Source Selection (April 2015)

15.3.1.1 Purpose.

This section provides policies, procedures and guidelines for conducting competitive negotiated acquisitions under Federal Acquisition Regulation (FAR) Part 15 and EPA Acquisition Regulation (EPAAR) Part 1515.

15.3.1.2 Background.

Acquisition processes and techniques used to conduct competitive negotiation acquisitions are referred to as source selection procedures. The FAR gives agencies broad discretion in devising source selection procedures. While different techniques may be used, the overall goal of every source selection is to conduct a fair and unbiased competition and to award a contract to the offeror with the most favorable offer that fully meets the government's needs. In order to meet these objectives, it is important to have a sound Source Selection Plan (SSP), a fair evaluation, and thorough documentation.

15.3.1.3 Authority/Applicability.

The policies and procedures in this section apply to all negotiated competitive acquisitions which utilize FAR Part 15 and EPAAR Part 1515. This section does not apply to the following types of acquisitions:

- Sole source acquisitions (FAR 6.3);
- Basic Research and Development acquisitions where Broad Agency Announcements (BAAs) and Program Research and Development Announcements (PRDAs) are required in support of a specific project (FAR 35);
- Acquisitions using sealed bidding procedures (FAR 14);
- Acquisitions using simplified acquisition procedures (FAR 13);
- Acquisitions using streamlined procedures for commercial items (FAR 12.6);
- Acquisitions for architect-engineer services (FAR 36);
- Orders placed under indefinite-delivery contracts (FAR 16.505); or
- Orders placed under Federal Supply Schedules contracts (FAR 8.4).

15.3.1.4 Definitions [Reserved].

15.3.1.5 Policy.

The policies and procedures in EPAAG 15.3.1 Appendix A, Source Selection Guide, shall be followed for all applicable acquisitions (see 15.3.1.3 above).

EPAAG 15.3.1

APPENDIX A

Source Selection Guide

APRIL 2015

Office of Acquisition Management,
Policy Training & Oversight Division

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I. Purpose

This guide provides policies, procedures and guidelines for conducting competitive negotiated acquisitions under Federal Acquisition Regulation (FAR) Part 15 and EPA Acquisition Regulation (EPAAR) Part 1515.

II. Background

Acquisition processes and techniques used to conduct competitive negotiation acquisitions are referred to as source selection procedures. The FAR gives agencies broad discretion in devising source selection procedures. While different techniques may be used, the overall goal of every source selection is to conduct a fair and unbiased competition and to award a contract to the offeror with the most favorable offer that fully meets the government's needs. In order to meet these objectives, it is important to have a sound Source Selection Plan (SSP), a fair evaluation, and thorough documentation.

III. Policy

This guide is fully consistent and compliant with the FAR, the EPAAR and the EPA Acquisition Guide (EPAAG). In the event of an apparent conflict between this guide and the FAR/EPAAR, the FAR/EPAAR will govern and take precedence. In the event of an apparent conflict between this guide and other EPAAG sections, contact the OAM [Acquisition Policy Training Service Center](#) (APTSC) for clarification. The policies and procedures in this guide apply to all negotiated competitive acquisitions which utilize FAR Part 15 and EPAAR Part 1515. This guide does not apply to the following types of acquisitions:

- Sole source acquisitions (FAR 6.3);
- Basic Research and Development acquisitions where Broad Agency Announcements (BAAs) and Program Research and Development Announcements (PRDAs) are required in support of a specific project (FAR 35);
- Acquisitions using sealed bidding procedures (FAR 14);
- Acquisitions using simplified acquisition procedures (FAR 13);
- Acquisitions using streamlined procedures for commercial items (FAR 12.6);
- Acquisitions for architect-engineer services (FAR 36);
- Orders placed under indefinite-delivery contracts (FAR 16.505); or
- Orders placed under Federal Supply Schedules contracts (FAR 8.4).

IV. Source Selection Plan

A. What is a Source Selection Plan?

The SSP provides a framework for the source selection process. It outlines in detail how proposals will be solicited from industry, who will evaluate proposals, the composition of the Source Selection Evaluation Board (SSEB), and how source selection records and data will be protected. The SSP also describes the evaluation factors and significant subfactors used to evaluate proposals, how communications will be handled, and how successful offerors will be selected for award. Essentially, the SSP is the Government's description of how it intends to purchase its requirements.

B. When is the SSP Required?

An SSP is required for all best-value, negotiated, competitive acquisitions under FAR Part 15, regardless of the dollar value of the acquisition or the source selection process utilized. The SSP should be developed by the contracting officer with input from the Acquisition Planning Team (APT), members of the SSEB, and the Source Selection Authority (SSA). All SSPs shall be approved by the SSA, including any modifications to the SSP such as changes to the evaluation criteria or substitution of SSEB members.

C. What are the Required Elements of a SSP?

Direction on each element of the SSP is provided throughout this guide, such as performing acquisition planning, assigning roles and responsibilities, and developing source selection processes and evaluation criteria. At a minimum, every SSP shall include the following:

Required SSP Elements

Background and Objectives	Include a brief description of the requirement, a summary of the objectives, and any reference to applicable guidance.
Acquisition Planning	Include a summary of the acquisition planning results, including, when applicable, type(s) of contract(s) anticipated, any incentives contemplated, source selection processes, anticipated contract type, multiple award or single award, performance based acquisition methods and performance metrics, set asides, milestones, intended special contract clauses, and any other unique acquisition strategies.
Source Selection Evaluation Board	Describe the organizational structure of the SSEB and identify all members by name. Identify teams, subgroups and advisors as necessary. Identify the various roles and responsibilities of the SSEB members and advisors.
Communication	Describe the process and controls for communication with industry as well as internal Government team communication during the source selection. Outline the security measures that will be utilized to ensure information is protected as source selection information (see FAR 2.101 & 3.104).
Security	Describe the measures that will be utilized to secure proposals and source selection information (see FAR 2.101 and FAR 3.104).

Source Selection Process	Identify the source selection process that will be utilized (see Section VII below).
Evaluation Factors & Subfactors	Describe the evaluation factors and subfactors and their relative order of importance. Attach the relevant portions of the instructions to offerors and evaluation criteria (Sections L and M or equivalent and commercial item provisions of the solicitation).
Evaluation of Proposals	Describe the evaluation process, including specific procedures and techniques to be used in evaluating proposals. Describe the rating plan to be used, the evaluation of options and/or award terms, the evaluation of cost/price, and the evaluation of responsibility matters. For past performance, define what is considered recent and relevant.
Milestone Plan	Identify the schedule for significant source selection activities in sufficient detail to allow the reviewing authorities to assess the practicality of the schedule.
Non-Government Personnel	Address the use of non-government personnel in the source selection process if applicable.
Deviations & Delegations	Identify and explain requested or approved deviations and delegations.
Other	Identify any other pertinent information as necessary.
Reviews & Approvals	Identify all necessary reviews and approvals for the entire source selection. Obtain approvals and signatures on the SSP as required by this guide and EPAAG Subsection 1.6.

V. Acquisition Planning

A. What is Acquisition Planning?

Acquisition planning is the process by which all personnel responsible for an acquisition coordinate a plan to fulfill Agency needs in a timely manner and at a reasonable cost. Acquisition planning is mandatory for all acquisitions and the cornerstone for any good source selection. In addition to FAR Part 7 requirements, EPAAG Subsection 7.1 dictates good practices and EPA specific requirements for conducting acquisition planning. EPA acquisition officials participating in source selections must be familiar with and adhere to all EPAAG 7.1 requirements. These requirements include acquisition forecasting; standard Procurement Acquisition Lead Times (PALT); procurement initiation; acquisition planning; and a complete procurement package. PALTs are discussed in EPAAG 7.1.5.2 and can be found in EPAAG 7.1, Attachment A. Acquisition planners must take these PALTs into consideration when determining how far in advance to initiate a procurement in order to ensure it will be awarded in time to meet the Agency's need.

B. How do you initiate a Procurement?

As detailed in EPAAG 7.1.5.3, in order to initiate a procurement, the program office must initiate an Advanced Procurement Plan (APP) in the EPA Acquisition System (EAS). Once the procurement has been initiated, the contracting officer will form and convene a formal Acquisition Planning Team (APT).

C. What is an Acquisition Planning Team?

The APT consists of all stakeholders in an acquisition who may or may not be part of the SSEB. For example, the APT will include representatives from the Office of Small Business Programs (OSBP). It may or may not be necessary to include OSBP

representatives in the SSEB. Inclusion will vary depending on the source selection. Details regarding the composition of the APT can be found in EPAAG 7.1.5.5(I). Details regarding SSEB membership can be found in section VI below.









D. What are the Acquisition Planning Team's Responsibilities?

Once the APT has convened, the team will perform market research that will be used to develop the source selection strategy including the makeup of the SSEB, the procurement strategy, evaluation criteria, and rating techniques. All of these elements will eventually be included in the Source Selection Plan, which is detailed in section IV above. A toolkit to assist with performing market research can be found on the OAM Knowledge Management Site. The team also works together to complete the final procurement package which includes the Statement of Work/Performance Work Statement, an Independent Government Estimate, Conflict of Interest Plan, etc., (see EPAAG 7.1.5.6 for details on the procurement package).

VI. Roles and Responsibilities

A. What/Who is the Source Selection Authority?

The SSA is the individual responsible for ensuring the integrity of the source selection process and making the final source selection decision. EPA delegations for the SSA can be found in EPAAG 1.6.1 Attachment A. In accordance with FAR 15.303 and this Guide, the SSA is responsible for the following:

-  Appoint members of the SSEB including chairpersons where applicable.
-  Be readily available to the SSEB and provide the team with appropriate resources, guidance, and special instructions to conduct the evaluation and selection procedures.
-  Ensure that all persons receiving source selection information are instructed to comply with applicable standards of conduct and sign the Source Selection Information Briefing Certificate.
-  Ensure Non-Disclosure Agreements and Conflict of Interest Statements from Government members, advisors, and non-Government members are completed, including any procedures to prevent the improper disclosure of information.
-  Ensure acquisition strategy and planning objectives are achieved and approve the Source Selection Plan before solicitation release.
-  Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements.
-  Ensure that proposals are evaluated based solely on the factors and subfactors contained in the Request for Proposal (RFP).
-  Consider the recommendations of advisory boards or panels (if any).

- ✚ Approve the decision whether to award without discussions or enter into discussions and the establishment of any subsequent competitive range.
- ✚ Select the source or sources whose proposal represents the best value to the Government.
- ✚ Document the rationale in the Source Selection Decision Document (SSDD) for the selected source whose proposal offers the best value to the Government.

B. What is the Source Selection Evaluation Board?

The SSEB is a group of government personnel that assist in the development of the Source Selection Plan and evaluate proposals to ensure a comprehensive evaluation of offers. In order to accomplish a successful source selection, one of the first steps is identifying who will be on the SSEB. The SSEB is composed of qualified management, technical, scientific, contracting, and business personnel, the number and type of which vary depending on the size and complexity of the acquisition. When deciding on the type and number of personnel to be included in the SSEB, it is important to strike the right mix. Too few people without all the right technical skills can result in an incomplete evaluation, and too many people can make the process cumbersome. Therefore, the SSA should ensure the board is limited only to those members necessary to obtain the right mix of skills to adequately evaluate proposals. The SSEB should not contain members who cannot contribute in a meaningful way to the evaluation.

C. How are team members selected/appointed to the SSEB?

The SSA shall appoint the SSEB team members. Team members of the evaluation board should be tailored based on the individual acquisition and should include appropriate contracting, legal, logistics, technical and other experts to ensure a comprehensive evaluation of offers. Depending on the needs of the acquisition, the SSEB may be organized into functional teams based on specific evaluation criteria. For example, the SSEB may include a separate team to evaluate technical proposals which at EPA is called a Technical Evaluation Panel (TEP); a separate team to evaluate cost and pricing; and a separate team to evaluate past performance. When appointing team members, the SSA shall designate voting and non-voting members. Voting members typically consist of the TEP chairperson, the contracting officer, and technical experts. Advisors shall be non-voting members. Non-government personnel may not be voting members. All appointments shall be in writing and included in the SSP.

D. Who/What is the Chairperson?











The SSA will appoint a chairperson for the TEP, and when warranted, the other evaluation teams, e.g. pricing and past performance. Each chairperson is responsible for managing his or her respective team to include ensuring milestones are met, scheduling meetings, and ensuring the completion of a clear and complete evaluation report.

E. What qualifications must SSEB members have?

All members of the SSEB must be highly competent in their areas of subject matter expertise. They must also possess the skills and ability to carry out their tasks in a professional manner and be free of bias or any conflicts of interest. Examples of major conflicts of interest that must be avoided include any financial interests in the business offerors, including engaging in employment discussions with offerors. If a member of the SSEB has an actual or apparent conflict of interest or bias at any time during the procurement, that person shall be removed from the SSEB.






F. What Responsibilities do SSEB Members Have?

SSEB members are responsible for the following:

-  Sign a Source Selection Information Briefing Certificate.
-  Sign a Non-Disclosure Agreement and Conflict of Interest Certificate.
-  Consider duties under the SSEB to be a primary responsibility.
-  Support disposition of industry comments regarding the draft RFP.
-  Assist in the development of responses to questions received from industry/potential offerors regarding the final RFP and make recommendations for solicitation amendments.
-  Ensure each proposal is evaluated solely on the evaluation criteria included in the RFP and is not compared to other proposals.
-  Follow all evaluation procedures provided in this guide.
-  Shall not hold any conversations with or answer questions from offerors. All questions shall be referred to the contracting officer.
-  Provide the consolidated evaluation results to the designated chairperson.
-  Support any post source selection activities such as debriefings and post-award reviews/meetings, as required.

G. What are the Contracting Officer's Responsibilities?

Contracting officers are responsible for ensuring all necessary actions for effective source selections. Specific source selection duties include the following:

-  Serve as the primary business advisor for the entire source selection.
-  Ensure that FAR Part 15 and Agency required approvals are obtained before non-government personnel are allowed to provide source selection support.
-  Assist the SSA in appointment of SSEB members (including substitutions of members).
-  Assist the SSA in establishing evaluation teams, e.g. technical, cost, past performance, as appropriate, to support the source selection.
-  Ensure members of the SSEB have signed Non-Disclosure Agreements and Conflict of Interest Certificates and are knowledgeable of their responsibilities before being provided with any source selection sensitive information.

- ✚ Ensure the evaluation process follows the evaluation criteria and ratings process included in the solicitation.
- ✚ Provide the consolidated technical evaluation results to the SSA.
- ✚ Ensure the SSEB only performs comparative analysis of proposals and only makes source selection recommendations at the request of the SSA.
- ✚ Ensure all documentation requirements in the FAR, EPAAR and this guide are followed.
- ✚ Ensure the RFP is complete, clear, and consistent with Agency objectives and that the procedures for evaluation and selection are clearly set forth and meet the needs of the activity requiring the acquisition.
- ✚ Release the solicitation only after obtaining all required approvals including those in the FAR, EPAAR and EPAAG as well as the SSA's approval of the SSP.
- ✚ Serve as a single point of communication for all solicitation related inquiries from actual or prospective offerors.
- ✚ Control exchanges with offerors in accordance with FAR 15.306 after receipt of proposals.
- ✚ Prior to holding any discussions with offerors, establish a competitive range with the approval of the SSA.
- ✚ Lead all discussions with offerors with the support of SSEB team members.
- ✚ Ensure that procedures exist to safeguard source selection information in accordance with FAR 3.104.
- ✚ Approve access to or release of source selection information before and after contract award, in accordance with FAR 3.104-4.
- ✚ Maintain source selection evaluation records. When evaluation information developed by any member of the source selection team is presented in any form to the SSA, the evaluation information and any related supporting material becomes an official record that must be maintained and not altered. Updates, revisions, or changes to that evaluation information must be captured in subsequent documentation in such a way that the original record remains distinct. Evaluation materials are considered working papers prior to their disclosure to the SSA. Those working papers may be changed or modified by their author, as necessary, to support the evaluation process.
- ✚ Lead all post source selection activities such as debriefings and post-award reviews/meetings.

H. What/Who are Advisors?

The contracting officer (with the SSA's approval) may appoint advisors as necessary to assist in the source selection evaluation. The use of advisors should be kept to a minimum, and they shall be selected based on the experience and expertise they can provide to the SSEB. They may participate in discussions, but they shall not

unduly influence the source selection or determine ratings or rankings of offerors' proposals. Examples of advisors include senior acquisition personnel within the Office of Acquisition Management, the Office of Small Business Programs, and the Office of General Counsel. When necessary, it is acceptable to appoint an advisor with specific technical expertise that falls outside the experience of other members of the SSEB; however, in general, the SSEB shall consist of personnel with the requisite experience and knowledge to evaluate proposals. For example, members of the pricing team shall have adequate cost and pricing knowledge to evaluate proposals; however, it would be acceptable to solicit an advisor to help with complex cost or pricing issues. Use of non-government personnel as advisors may be authorized; however, this practice should be limited. Additionally, the use of non-government personnel as advisors in a source selection shall be supported with a written determination in accordance with FAR 37.204.

I. What is the Difference between the TEP and the SSEB?

The SSEB consists of all personnel necessary to complete the source selection evaluation. The TEP is a sub function of the SSEB and is responsible solely for the technical evaluation. In some acquisitions, members of the TEP may also serve as members of other subgroups such as pricing or past performance.

VII. Source Selection Processes

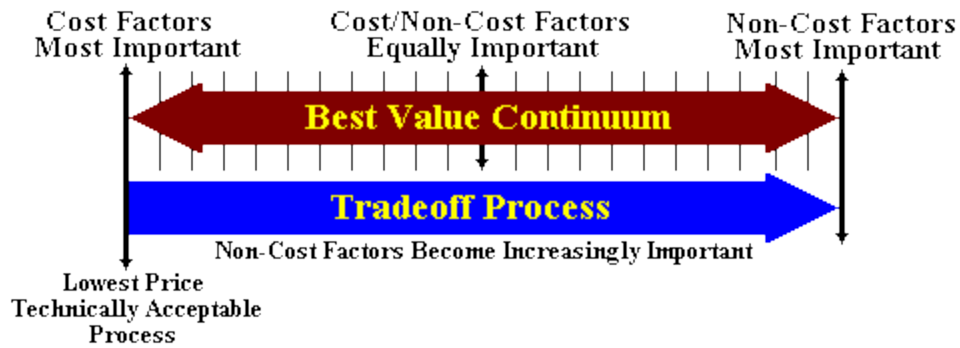
A. What is a Source Selection Process?

The source selection process is the Government's approach, or combination of approaches, to obtain best value in negotiated acquisitions. As noted previously, the FAR gives broad discretion to agencies when developing source selection strategies; however, the overall goal of every source selection is to obtain the best value for the government.

B. What is Best Value?

FAR 2.101 defines best value as "the outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement." Best value may not be the lowest priced alternative, rather the best value is the option that provides the greatest benefit for the price.

In different types of acquisitions, the relative importance of cost or price may vary. For example, in an acquisition for landscaping services where the requirement is clearly definable and the risk of unsuccessful contract performance is low, cost or price may play a dominant role in the source selection strategy. However in an acquisition for the development of a ground water quality modeling system where the requirement is less definitive and the performance risk is high, technical factors and/or past performance considerations may be notably more important than cost or price. This concept of balancing the technical requirements and risk against the cost or price of an acquisition to obtain best value is known as the *best value continuum*. The best value continuum is shown in the diagram below:



Generally, as technical complexity and performance risk increase, the importance of cost or price in the source selection decreases. The Government should select a source selection process that considers this balance between cost and non-cost factors.

C. What Types of Source Selection Processes can you Use?

FAR Subpart 15.1 describes the primary processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition. At EPA, the following processes may be used:

1. **Tradeoff Process:** The tradeoff process is defined in FAR 15.101; it is a process whereby the government may permit tradeoffs among cost or price and non-cost factors which may result in awarding to other than the lowest priced or the highest technically rated offer. One distinction of this process is that the determination of best value is made after receipt and evaluation of proposals. The essence of this process is that the selection decision is a subjective business judgment as to whether the added value of non-price factors is worth a higher price. These tradeoff decisions must have a rational basis. The benefit of this process is that it allows the Agency to pay more for non-price factors it deems to be beneficial. Guidance on how to determine which factors to include in this process is included in section VIII below. The negative of the tradeoff approach is that it can be a very time consuming process.
2. **Lowest-Price, Technically Acceptable (LPTA) Process:** LPTA is defined in FAR 15.101-2, and it is a process whereby the Agency determines up front that the best value will be obtained by paying the lowest price offered to any offeror with an acceptable technical proposal. A key element of this approach is that the non-cost evaluation factors are all of equal importance. Technical proposals and past performance are evaluated on a go/no-go basis for acceptability and tradeoffs are not permitted. Proposals that fail to meet any of the factors cannot be considered for award unless given an opportunity to cure the noncompliance through oral or written discussions which are discussed in section XIV below. When using the LPTA process, it is critical that all factors the Agency wants to evaluate are included in the solicitation, and that evaluators only evaluate proposals based on this criteria. Additionally, the Agency should state in the solicitation that it intends to award without discussions. The negative of the LPTA

approach is that the Agency cannot later decide to award to a higher-priced offer it deems superior. Thus, while this approach is encouraged, it should only be used when the requirement is clearly defined and there are no distinguishing factors that would benefit from the tradeoff process.

- 3. Combination of Tradeoff and LPTA:** In this process, the Agency subjects some evaluation factors to a go/no-go test and chooses to identify some factors where it is willing to allow tradeoffs. Like the other two approaches, it is absolutely critical that the factors to be evaluated and the method of evaluating them, e.g. go/no-go or relative merit of the factor, be included in the solicitation and evaluations conducted in accordance with the solicitation. One example of a process that uses a combination of tradeoff and LPTA is a past performance price tradeoff. In this type of acquisition, technical proposals are still evaluated on a go/no-go basis; however, the Agency may choose to pay more to an offeror with superior past performance. Likewise, the Agency may specify the majority of technical aspects as go/no-go but want to consider price tradeoffs for a particular technical factor that is of high priority for that particular requirement.

VIII. Evaluation Factors and Subfactors

A. What are Evaluation Factors?

Evaluation factors and significant subfactors are used to determine which proposal in a source selection will be the most beneficial to the government. As such, selecting the right evaluation factors and subfactors is one of the most critical aspects to a successful source selection. It is also one of the most challenging tasks. When deciding what factors and subfactors to use, acquisition planners must include all elements critical to selection of the offer with the best value, but at the same time, must limit factors to permit the evaluation process to be completed in a short time.

Guidance for selecting evaluation factors is provided in FAR 15.304. The FAR requires cost/price and the quality of the product or service be evaluated for every source selection. Past performance must be evaluated for acquisitions exceeding the Simplified Acquisition Threshold (SAT) unless the contracting officer documents why it would not be an appropriate evaluation factor. The FAR further states that evaluation factors (and significant subfactors) shall be tailored to each acquisition, must represent the key areas of importance, and must support meaningful comparison and differentiation among competing proposals.

When selecting evaluation factors, it's important to remember that using too many factors and subfactors will obscure the areas of key importance, will make proposal preparation more burdensome, and will require more time and resources to evaluate. Since all key areas of performance will be included in the specifications as mandatory requirements anyway, acquisition planners need only evaluate major areas necessary to assess offerors' capabilities or major areas which can be used to differentiate among competitors. Thus, the number of factors and subfactors should be kept to the absolute minimum required to effectively assess the proposals.

B. How Do We Use Evaluation Factors?

Generally, evaluation factors are used for two purposes. The first is to evaluate the offer submitted, and the second is to evaluate the capability of the offerer. The offer constitutes a promise by the contractor that will be included in the contract and is contractually binding. At a minimum, price or cost and fee will be a part of the offer that is evaluated and included in the contract. However, depending on the requirement, there may be other parts of an offer that the government wants to evaluate and make binding such as the precise product or service offered (if different from the requirement specified by the government), a warranty, a delivery schedule, etc. The second category of evaluation factor, the capability factor, is used to evaluate whether the offeror has the ability to perform the work specified. Capability factors are not contractual promises and are not subsequently included in the binding contract.

When describing factors in the RFP, it is important to distinguish between which factors constitute an offer that will be incorporated into the contract and which are for evaluating capability. While it may seem easier to simply incorporate the successful offeror's entire proposal into the subsequent contract, this is not a good practice because everything in the offer then becomes binding. Making the contractor's proposal binding could harm the government if the proposal contains performance requirements that are less demanding than the original government specification. Likewise, while a contractor's proposed technical solution may show their capability and make their offer a better value than another contractor, locking the offeror into the solution could be detrimental later on. In a performance based environment (see EPAAG 37.1), the responsibility on how to perform lies with the contractor. By locking the contractor into their original technical solution, the Agency could hinder the contractor from later instituting a newer, superior approach. While a bilateral modification could later be accomplished, that could come at a cost to the government. That is not to say that the contractor's proposal, or parts of the proposal, should never be incorporated into the contract. Rather, acquisition planners should carefully decide based on the individual acquisition whether each evaluation factor should be an offer that will be binding or used to evaluate capability.

C. What Evaluation Factors Can Be Used?

At EPA, all source selections shall be structured with the following evaluation factors. All three factors must be included in every source selection. No additional criteria or substitutions shall be used unless approved in writing by the Chief of the Contracting Office (CCO).

 Technical Capability

 Cost/Price


 Past Performance

- 1. Technical Capability:** Assessing technical capability includes examining aspects related to the contractor's ability to perform the Agency's requirement such as specific products or services, specific levels of technical expertise,

specific processes and techniques, delivery and completions schedules, experience, and various other capability factors. Depending on the complexity of the acquisition, these various aspects can be rolled into the overall evaluation factor, or if significant enough, delineated as subfactors. However, it is critical that subfactors be limited to avoid the evaluation process from becoming overly complex, and the review process from becoming cumbersome. Therefore, at the EPA, subfactors under Technical Capability shall be limited to no more than five, and preferably less. All subfactors must be clearly defined in a narrative description, complete, and not overlap or conflict with each other. In order to decide if an element is important enough to be a subfactor, ask the following two questions. Is the subfactor necessary to determine the adequacy of an offeror's approach or its ability to meet the specifications? Will it be used as a significant differentiating factor between offerors?

The elements evaluated under Technical Capability will vary depending on the type of requirement; however, below are some aspects typically included. These elements may be included in the overall factor or separated or combined into individual subfactors depending on the particular acquisition.

- a. **Product or Service:** When using a performance specification, the government evaluates the specific product or services proposed to see how well it/they meet the specification. For products or services, the government should evaluate the quality of product/service proposed, as well as the offeror's ability to perform as promised and understanding of the requirements in the RFP. This type of evaluation could include a technical solution, such as when the Agency wants to evaluate the proposed designs of a new system or a solution to a need. It could also include an evaluation of processes or techniques to be used. The latter differs from a technical solution in that the government is not looking for a solution to meet its needs but is instead evaluating the processes or techniques the offeror intends to use to meet the performance requirement. Typically, the performance period is already included in the requirement; however, if it would benefit the Agency to have a shorter period of performance, than period of performance might become part of the evaluation factor.
- b. **Personnel:** This subfactor is an evaluation of the offeror's integrated approach for hiring, training, assigning and retaining qualified personnel. Items to consider include: an approach for limiting and mitigating employee turnover and vacancies; the specific training approach to ensure any required initial and recurring qualifications, proficiency, certification, and training actions are taken to provide a qualified workforce; the approach for maintaining currency of certifications and credentials; and key personnel.

 When key personnel are evaluated, the RFP must state the key positions that are important to the success of contract performance. At a minimum, résumés shall be requested; however, since résumés do

not provide information on the personnel's performance record, it is also a good idea to request references, letters of commitment and those individuals' participation in any oral presentations. The RFP shall state whether this is an offer factor or capability factor, meaning whether a key personnel clause requiring the offeror to utilize the designated personnel is included in the RFP. It should be noted that the use of a key personnel clause does not guarantee the availability of the designated personnel. It only requires the government to approve any subsequent substitutions. In a performance based environment, it is up to the contractor to meet the government's requirement using whatever types and amounts of personnel needed. The government's concern should be whether the end result is achieved; not how the contractor achieves it.

- c. Management Approach:** This subfactor includes an evaluation of the contractor's proposed organizational structure and essential management functions. An offeror's management plan should describe the project organization proposed for the work, including internal operations and lines of authority, together with external interfaces and relationships with the Government; major subcontractors; and associate contractors. The management plan typically provides schedules necessary for the logical and timely pursuit of work accompanied by a description of the offeror's work plan. Higher level quality control documentation that is required from offerors such as a Quality Management Plan (QMP), Quality Assurance Project Plan (QAPP) or other equivalent quality control documentation should also be evaluated as part of the management approach. (See EPAAG 46 for more information on quality control requirements.) Typically, corporate resources are also assessed as part of the management plan. This is an assessment of the resources proposed by each offeror in general areas of personnel resources and facilities. For example, are the proper skill mixes and number of people necessary to do the work being proposed? Does the offeror propose facilities and, where required, special test equipment suitable and adequate to ensure timely performance of the work? If the offeror does not possess adequate resources internally, is there a demonstrated ability to acquire them through subcontracts?
- d. Small Business Participation:** In accordance with FAR 15.304, there are several small business aspects that must be evaluated when applicable. For example, solicitations that involve bundling that offer a significant opportunity for subcontracting, must include an evaluation factor that considers offerors' past performance in attaining subcontracting goals under previous contracts that required subcontracting plans. Additionally, solicitations involving bundling that offer a significant opportunity for subcontracting must include an evaluation factor that includes small business subcontracting participation as part of a small business plan.

e. Corporate Experience: One method of determining contractor capability is by examining the type and extent of an offeror's experience. Evaluating experience differs from evaluating past performance in that the former is an examination of what the contractor has done and how often, and the latter is an examination of how well the contractor did it. However, it is generally not necessary to have a separate factor under technical capability for experience. The reason is experience can be taken into account as part of the integrated assessment of past performance risk, particularly since the past performance evaluation takes into account the type and scope of work. Evaluating corporate experience as a separate evaluation criteria should be carefully considered because it can have the effect of limiting competition by providing an advantage to the incumbent contractor. The Competition in Contracting Act (CICA) requires agencies to promote and provide for full and open competition in soliciting offers and awarding Government contracts. Therefore, it is EPA policy that when used as an evaluation subfactor, corporate experience must be the least important subfactor.

2. Cost and Price Evaluation: Contracting officers shall purchase supplies and services from responsible sources at fair and reasonable prices. To ensure this outcome, contract cost or price shall be evaluated in every source selection. The level of analysis and detail required will vary among acquisitions depending on the complexity and circumstances of the acquisition, including the degree of competition, the phase of the program, the type of product/services to be acquired, whether certified cost and pricing data (CCPD) are required, and the contract type.

In order to enable offerors to make informed decisions on how best to propose, every solicitation should provide an adequate description of the cost or price evaluation approach including the analytical technique(s) to be used in evaluating cost or price. FAR 15.404-1 describes three primary analytical techniques to be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The chart below defines those three analytical techniques, describes when each is required or optional, and provides guidance to perform each type of analysis:

Proposal Analysis Techniques per FAR 15.404-1

Price Analysis	Cost Realism Analysis	Cost Analysis
Definition: Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.	Definition: Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the	Definition: Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs

	requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.	represent what the cost of the contract should be, assuming reasonable economy and efficiency.
<p>Required: Price analysis shall be used in <u>all</u> source selections.</p> <ul style="list-style-type: none"> When CCPD <i>are not</i> required, price analysis shall be used to determine the overall price is fair and reasonable. When CCPD <i>are</i> required and cost analysis is used to evaluate the reasonableness of individual cost elements, price analysis shall still be used to verify the overall price is fair and reasonable. 	<p>Required: Cost realism analyses shall be used in all source selections for cost-reimbursement (CR) contracts to determine the probable cost of performance for each offeror.</p>	<p>Required: Cost analysis shall be used when CCPD are required.</p>
<p>Optional: None.</p>	<p>Optional: Cost realism analyses may be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts.</p>	<p>Optional: Certain cost analysis techniques may be used to determine cost reasonableness or cost realism when a fair and reasonable price cannot be determined through price analysis alone.</p>
<p>Guidance: Price analysis always involves some type of comparison with other prices.</p>	<p>Guidance: Cost realism analysis may reveal that the <i>probable</i> cost may differ from an offeror's <i>proposed</i> cost. The probable cost should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the best value.</p>	<p>Guidance: Cost analysis supplements price analysis and/or cost realism analysis. The goal of cost analysis is to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be.</p>
<p>Use this technique in:</p> <p><i>FFP contracts</i> – to analyze total price and individual unit pricing.</p> <p><i>CR contracts</i> – to analyze total estimated cost plus fee or profit applicable to the contract type.</p> <p><i>T&M/LH contracts</i> – to analyze total price ceiling and fixed unit/fixed labor hour pricing.</p>	<p>Use this technique in:</p> <p><i>FFP contracts</i> – to conduct performance risk assessments and responsibility determinations if necessary.</p> <p><i>CR contracts</i> – to determine the probable cost of performance.</p> <p><i>T&M/LH contracts</i> – to conduct performance risk assessments and responsibility determinations if necessary.</p>	<p>Use this technique in:</p> <p><i>FFP contracts</i> – to support the overall price reasonableness determination when price analysis alone is insufficient.</p> <p><i>CR contracts</i> – to analyze CCPD when required.</p> <p><i>T&M/LH contracts</i> – to support the overall price reasonableness determination when price analysis alone is insufficient, and to analyze the cost of materials when CCPD on material costs is required.</p>

Other analytical techniques such as *technical analysis* and *price realism analysis* may be used to supplement the overall price or cost realism analysis. COs should fully familiarize themselves with these techniques prior to their inclusion in a solicitation. FAR Subpart 15.4 and the Contract Pricing Reference Guides found at: <https://acc.dau.mil/CommunityBrowser.aspx?id=406579&lang=en-US> provide additional guidance on cost or price evaluation.

3. **Past Performance:** FAR 15.304(c)(3)(i) requires past performance to be evaluated on all source selections over the simplified acquisition threshold unless the contracting officer documents the reason past performance is not an appropriate evaluation factor (see FAR 15.304(c)(3)(iii)). Evaluating past performance during a source selection is an indicator of a contractor's ability to perform; however, it should not be confused with making a determination of contractor responsibility in accordance with FAR Part 9. Rather, the evaluation during a source selection is meant to be a comparative process that helps distinguish one offer from another. FAR 15.305 requires a number of elements to be considered in evaluating past performance, including the currency and relevance of the information, source of the information, context of the data, and general trends in the contractor's performance.
4. **Relative Importance:** The last step in selecting evaluation criteria is to determine the relative importance of the factors and subfactors when using a trade-off process. FAR 15.304(e) requires the solicitation to state, at a minimum, whether all evaluation factors other than cost or price, when combined, are --
 - ✚ Significantly more important than cost or price;
 - ✚ Approximately equal to cost or price; or
 - ✚ Significantly less important than cost or price

The relative importance should be tailored based on the needs of the acquisition. Narrative statements relating one factor or subfactor to another should be used. Numerical weighting, e.g. assigning points or percentages, is NOT an authorized method of explaining the relative importance of evaluation factors and subfactors.

IX. Ratings

A. How are Proposals Rated?

FAR 15.305(a) allows the use of various rating/evaluation methods; however, EPA source selections shall be conducted using adjectival ratings as shown below for all evaluation factors other than cost. EPA does not allow the use of numerical scoring methods. No adjectival ratings shall be utilized for evaluating cost or price since cost or price is not rated. Technical capability and past performance are always rated separately. The following sections detail how to rate LPTA source selections and technical capability and past performance when using the trade-off process.

1. **LPTA:** When evaluating proposals using a LPTA approach, technical proposals and past performance need only be rated as acceptable or unacceptable. However, both the technical and past performance evaluations must be documented in the source selection decision with sufficient detail to show why an offeror's proposal was deemed acceptable or unacceptable. Past performance shall be evaluated using the instructions in paragraph 3 below. Documentation must specify how the offeror's technical proposal did or did not meet the requirements included in the specifications and the acceptability criteria stated in the RFP. Price shall be evaluated as discussed in paragraph VIII(C)(2) above.

LPTA Technical Ratings	
Rating	Description
Acceptable	Proposal clearly meets the minimum requirements of the solicitation.
Unacceptable	Proposal does not clearly meet the requirements of the solicitation.
LPTA Past Performance Ratings	
Rating	Description
Acceptable	Based on the offeror's performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort, or the offeror's performance record is unknown. (See note below.)
Unacceptable	Based on the offeror's performance record, the Government has no reasonable expectation that the offeror will be able to successfully perform the required effort.
Note: In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonably assigned, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305(a)(2)(iv)). Therefore, the offeror shall be determined to have unknown past performance. In the context of acceptability/unacceptability, "unknown" shall be considered "acceptable."	

2. **Technical Capability:** Overall technical capability is rated based on the degree to which the proposed approach meets or does not meet the minimum performance or capability requirements through an assessment of the strengths, weaknesses, deficiencies, and risks of a proposal. Ratings shall be provided for each subfactor based on the following adjectival scale.

Combined Technical/Risk Rating	
Rating	Description
Outstanding	Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.
Good	Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.
Acceptable	Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses do not outweigh one another or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.
Marginal	Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not outweighed by strengths. Risk of unsuccessful performance is high.
Unacceptable	Proposal does not meet requirements and contains one or more deficiencies. Proposal is unacceptable for purposes of an award

- 3. Past Performance:** When rating past performance, evaluators must consider the recency and relevancy of the information provided as well as how the contractor performed under the contracts referenced. Determining recency and relevancy can be subjective; therefore, these terms must be defined in the SSP. There are, however, some basic guidelines to follow. For instance, PPIRS data is only maintained for three years, therefore; a good rule of thumb for recency is to apply this same standard to source selections. However, depending on the type of work being performed, this timeframe could vary. Aspects to consider when determining relevancy include similarity of service/support, complexity, dollar value, contract type, and degree of subcontract/ teaming. The requirements for considering the history of small business utilization are outlined at FAR 15.304(c)(3)(ii). Based on the recency, relevancy and quality of performance, one overall assessment rating shall be assigned for each offeror based on the ratings in the following table, when the LPTA approach is not being used:



Performance Confidence Assessment	
Rating	Description
Substantial Confidence	Based on the offeror's recent/relevant performance record, the Government has a high expectation that the offeror will successfully perform the required effort.
Satisfactory Confidence	Based on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort.
Limited Confidence	Based on the offeror's recent/relevant performance record, the Government has a low expectation that the offeror will successfully perform the required effort.
No Confidence	Based on the offeror's recent/relevant performance record, the Government has no expectation that the offeror will be able to successfully perform the required effort.
Unknown Confidence (Neutral)	No recent/relevant performance record is available or the offeror's performance record is so sparse that no meaningful confidence assessment rating can be reasonably assigned.

X. Requests for Proposals

A. What Should Be In the Request for Proposal?

In accordance with FAR 15.304(d) all factors and significant subfactors, their relative importance, and a method for evaluating past performance shall be clearly stated in the solicitation. In a commercial acquisition, evaluation factors are included in FAR clause 52.212-2 Evaluation. In non-commercial acquisitions, evaluation factors are included in sections L and M of the Uniform Contract Format. In simplest terms, section L instructs offerors how to submit proposals and explains what the government will evaluate. Section M informs the contractor how the government will evaluate the proposals through the use of evaluation factors and their relative importance. It is a good practice to develop sections L and M at the same time to ensure consistency. Additionally, it is a good practice for the preparer of the SOW or PWS be involved in the writing of sections L and M to ensure consistency between the requirement and the solicitation. Sections L and M should not be copied from previous source selections. Each source selection should be tailored to the specific requirement since important factors in one evaluation may be irrelevant in another.

B. What Should Be in Section L?

-  Ensure the instructions clearly delineate what the government wants to evaluate and in what format. This approach will ensure offerors do not submit extraneous information that wastes both their time and the evaluators' time.
-  Ensure instructions include details on what is expected to be submitted for each element to be evaluated, e.g. what is required for each factor/subfactor identified in Section M?

- ✚ Ensure the instructions are consistent with the evaluation criteria that will be specified in Section M.
- ✚ Provide page limitations that are adequate for the information to be submitted.
- ✚ Do not require submissions of plans or data unless they are going to be evaluated and are necessary to make a source selection decision.
- ✚ Consider requesting an outline of an intended approach instead of a detailed plan, if appropriate.
- ✚ Instruct the contractor to complete all required blocks of RFP section A (SF 1442 or SF 1449) by specifying the required blocks.
- ✚ Provide instructions on how the offeror should complete section B of the RFP. For example, inform the offeror to insert proposed unit and extended prices for each CLIN and SubCLIN.
- ✚ Provide instructions on how to complete Section K of the RFP, Representations and Certifications.
- ✚ Provide instructions on what to submit for Past Performance data such as surveys, list of references to be contacted, etc.
- ✚ If oral proposals are being utilized (FAR 15.102) provide instructions to offerors regarding the time and date, required content, and any prohibitions/limitations.

C. What Should Be In Section M?

- ✚ Section M must define and communicate the basis for the integrated assessment and subsequent determination of best value. Identify which of the approved EPA procurement strategies (section VII above) will be used to determine best value.
- ✚ List each factor and subfactor to be evaluated and define the relative importance of the factors and subfactors.
- ✚ State how each factor/subfactor will be evaluated (see section VIII above).
- ✚ When using a go/no go approach, define the minimum level at which the offeror's response will be determined to be acceptable or unacceptable.
- ✚ Ensure nothing goes into Section M that is not going to be evaluated. Everything included in Section M must be important to the award decision.

D. What Should Be in the Synopsis?

The RFP must be synopsisized in accordance with FAR Part 5 requirements. Specific content to be included in synopses can be found at FAR 5.207.

E. Can You Post a Draft RFP?

The EPA Vendor Communication Plan, which can be found on the OAM Knowledge Management Site, encourages early and frequent communication with industry. As such, draft RFPs, which are an excellent way to seek feedback from industry, are highly encouraged for acquisitions where industry input would be beneficial such as new requirements, revamping an existing requirement, complex information

technology requirements, etc. Acquisition planners should build time into the schedule for a draft RFP whenever industry input would add value to the process. Procedures for issuing the draft RFP (and the final RFP) can be found in the EAS Web Guide. When issuing a draft RFP, clearly state that it is not a solicitation for offers, but rather an invitation for prospective offerors to provide feedback on the government's requirement. In addition to inviting general questions and comments, it is a good idea to solicit specific feedback by asking:

- ✚ Whether any requirements in the SOW/PWS are inefficient or unnecessary;
- ✚ Whether there are any perceived risks to the requirement such as safety, occupational health, security (including information technology security), environmental, property, quality assurance, etc.; and
- ✚ Whether there are voluntary consensus standards that may be a suitable alternative to any government-unique specifications (see FAR 11.101).

It is encouraged but not necessary to release the entire draft RFP; however, at a minimum, sections L and M and the PWS/SOW should be released. It is acceptable to release the draft PWS or SOW in advance of the rest of the draft RFP.

The draft RFP must identify a point of contact and method for communicating comments. The draft RFP must also include a statement that information presented in the draft RFP is subject to change and that incurring expenses or beginning to formulate an approach in preparation for the acquisition based on information presented in the draft RFP is solely at the potential offeror's risk.

When issuing a draft RFP, acquisition planners shall identify a method for recording and addressing all comments received, and whenever possible, shall respond to comments by providing a response with the final RFP.

F. What about Pre-Proposal Conferences?

Another outstanding tool to communicate with industry is a pre-proposal conference. Pre-proposal conferences provide for an early exchange of information with industry after the solicitation is issued and prior to receipt of proposals. These conferences are an effective tool to answer offerors' questions and promote a better understanding of work statements, specifications, and other technical and administrative requirements.

It is the contracting officer's discretion whether or not to hold a pre-proposal conference. In general, the more complicated the acquisition, the more benefit will be achieved from holding the conference. When a pre-proposal conference is held, it shall be conducted by the contracting officer with the assistance of other members of the acquisition planning team. The requirements at FAR 15.501 and the guidelines provided on the EPA Communicating with Industry page on the Knowledge Management Site shall be followed. The timing of the conference should provide offerors with enough time after the release of the RFP to review and understand the requirement, as well as sufficient time afterwards for the government to address

comments and offerors to prepare and submit their proposals. The contracting officer shall caution offerors at the beginning of the conference that remarks and explanations made by government personnel do not qualify, change, or otherwise amend the terms of the solicitation, and that only a written amendment to the solicitation is binding.

The conference should be structured to provide a presentation of the significant aspects of the acquisition, a tour of any facilities if necessary, and a question and answer session. A record of all the information provided at the conference, together with a copy of all questions and answers, shall be provided to all prospective offerors by formal written amendment to the solicitation.

G. What about the Final RFP?

Prior to issuing the final RFP, all required reviews and approvals in the FAR and EPAAG 1.6.1 must be obtained. Any subsequent amendments to the RFP require approval by the approving official listed in EPAAG 1.6.1 Attachment A number 2.

XI. Proposal Evaluation

A. How Do We Receive Proposals?

Procedures for receiving proposals can be found in the EAS Web Guide. Upon receipt of proposals, the individual designated to receive proposals is responsible for recording the date and time the proposal was received and for ensuring that the unopened proposals are properly safeguarded in accordance with the SSP. See FAR 15.207 and EPAAG 15.2.1 for other special instructions for handling and receiving proposals such as unreadable electronic proposals.

B. How Do We Handle Late Proposals?

Any proposal received after the deadline stated in the RFP will be considered a late proposal and must be handled in accordance with FAR 15.208 and applicable Instructions to Offerors provisions (FAR 52.215-1, or for commercial acquisitions, FAR 52.212-1).

C. Who Assigns Proposals?

Upon receipt of proposals, the contracting officer shall ensure all proposals are properly safeguarded and marked as source selection information in accordance with FAR 3.104-4. It is not necessary to redact names or other identifying information of offerors prior to assigning copies to the SSEB members.

D. How Do We Screen Proposals?

Prior to commencing formal evaluations, an initial evaluation to determine basic acceptability criteria shall be conducted for each offer as follows.

Screening Activity	Description
Check the System for Award Management (SAM) at www.SAM.gov .	The contracting officer shall ensure each offeror is registered in SAM, has completed reps and certifications and is not on the SAM Exclusions list per FAR 9.404. If an offeror is on the list, the proposal should not be opened and, in accordance with FAR 9.405, cannot be evaluated. Immediately prior to award, the CO shall again review the SAM Exclusions to ensure that no award is made to a listed contractor.
Verify VETS 100 list.	In accordance with FAR 22.13, the contracting officer shall verify offerors are compliant with Veterans Employment and Training Service (VETS) requirements
Review Representations and Certifications	The contracting officer shall review offerors' representations and certifications (RFP Section K) to ensure there is nothing that will preclude awarding to the offeror, such as size status.
Review offers to ensure proposals are complete and in accordance with Section L of the solicitation and all other RFP requirements.	The TEP chairperson and the contracting officer shall review all proposals to ensure they are complete and do not exceed any page limitations included in the RFP. Any pages above and beyond the limit should be returned to the offeror unread (Section L must state this). Additionally, check to see if any exceptions to the RFP are included in the offer.

E. What is Involved in Charging the TEP?

Contracting officers are required to play an active role in technical evaluations and maintain a presence during the evaluation review and discussions. This includes charging the TEP with explicit instructions for performing the evaluations in accordance with the criteria specified in the solicitation. TEP instructions must be given both verbally and in writing before reviews begin. A sample TEP charging document can be found on the OAM Knowledge Management Site.

F. How Are Technical Evaluations Performed?

The Federal Acquisition Regulation (FAR) does not require ratings by individual technical evaluation panel members. FAR 15.305(a) simply provides that technical evaluations are utilized to assess the relative qualities of competitive proposals based solely on the factors and subfactors specified in each solicitation. FAR 15.305(a) also requires that "[t]he relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file." Each member of the TEP shall individually read and evaluate all sections of each offeror's technical proposal. Discussions and interaction between TEP members shall be kept to a minimum during this stage of the evaluation to ensure each TEP member has the opportunity to complete an independent assessment.

TEP members shall evaluate proposals solely on the evaluation criteria identified in Section M and shall not compare one offer to another. TEP members shall not rate each proposal individually. Instead, each member shall identify the strengths, deficiencies, significant weaknesses, and risks associated with each proposal based upon the evaluation factors and be prepared to discuss these with the rest of the TEP to determine a consensus rating. The following definitions are provided to assist with this process.

Type	Description
Strength	An aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.
Risk	The potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an offeror's proposed approach to achieving the technical factor or subfactor may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.
Weakness (FAR 15.001)	"...a flaw in the proposal that increases the risk of unsuccessful contract performance."
Significant Weakness (FAR 15.001)	"...a flaw that appreciably increases the risk of unsuccessful contract performance."
Deficiency (FAR 15.001)	A material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

G. What do Individual Evaluators Need to Document?

No formal documentation is required of individual evaluators. Evaluators may take narrative notes, but should be aware that any notes are discoverable. These individual notes are not returned to the contracting office for inclusion in the official contract file; however, they shall be retained and must be made available upon the contracting officer's request.

H. What is the Consensus Meeting?

Upon completion of individual evaluations, a consensus meeting will be held to determine overall ratings for each offeror for each factor and/or subfactor included in Technical Capability. Proposals shall be assigned a rating based on the methods established in section VIII C above. During the consensus discussion, the TEP chairperson shall ensure that all members of the TEP provide input to each factor/subfactor evaluated. Discussions must continue until the TEP reaches an overall consensus on the rating for factor/subfactor for each offeror.

I. How is the Consensus Documented?

Upon reaching a consensus, the TEP chairperson shall prepare a report for the SSA detailing the consensus rating for each Technical Capability subfactor for each offeror. Visual charts are highly recommended. The report must document all of the findings used to reach consensus. Findings shall be clear and concise with supporting rationale. Simple conclusive statements shall be avoided. Instead, all findings must be documented with specific examples that are relevant to the conclusion, that correlate to the offeror's proposal, and that clearly describe the TEP assessment of the proposal in a way that does not rely on reciting proposal contents. Describe all strengths, weaknesses, deficiencies, risks, and unknowns, and show a direct correlation between the finding to the evaluation criteria in Section M, the requirement, and the risk/benefit to the Government.

J. How is Cost and Price Evaluated?

In order to protect cost/price data to avoid intentional or unintentional bias on the part of the evaluators, cost/price information should not be disclosed to the TEP until after the initial technical evaluations are complete.

When conducting price analysis, the total price, including options, should be considered, as well as the individual CLIN prices to ensure pricing is not unbalanced. Unbalanced pricing exists when the price of one or more contract line items is significantly over or understated as indicated by the application of cost/price analysis techniques. For more information on unbalanced pricing, see FAR 15.404-1(g).

For fixed-price contracts, the evaluation can be as simple as determining whether there has been adequate price competition and ensuring that prices are fair and reasonable.

For cost-reimbursement contracts, the SSEB must analyze the offerors' estimated costs for purposes of both realism and reasonableness. The cost realism analysis will determine each offeror's probable cost of performance. This precludes an award decision based on an overly optimistic cost estimate. Additionally, whenever cost analysis is performed, profit or fee analysis must also be performed.

If cost realism is performed, the cost evaluators will identify and consider cost risks as part of that process. This risk is not rated. Cost realism analysis results in a probable cost estimate. The difference between the offeror's estimated cost and the probable cost estimate provides the evaluators with insight into the risk associated with performance from a cost perspective. Evaluators should pay close attention to large differences between the cost proposed and the probable cost estimate. This can be an indication that the offeror does not understand the requirement or has made a mathematical error.

Assistance with cost and pricing can be requested from the OAM Financial Analysis and Oversight Service Center (FAOSC) by submitting a consultation request which can be found on the [FAOSC intranet site](#).

K. How is Past Performance Evaluated?




One source of obtaining past performance data is through the government wide Past Performance Information Retrieval System (PPIRS); however, for higher risk contracts, PPIRS should not be the sole source of information. Additional outreach and research is recommended for all source selections and required for all complex information technology (IT) acquisitions, all Superfund acquisitions, and all acquisitions for services over \$500,000. Complex IT acquisitions include anything other than simple hardware purchases. Additional outreach and research includes some or all of the activities (as appropriate) included in the chart below. After researching all available sources of information, the team shall use the guidelines provided in section IX above to assign a performance confidence rating.

Additional Past Performance Research Required for source selections for all complex IT, all Superfund and all services over \$500K		
Steps	Actions	Benefits
Request information on recent Federal contracts.	Contact the contracting officer, Contracting Officer Representative (COR), or Program or Project Manager (P/PM) of the contractor's two largest, most recently awarded Federal contracts or orders so the history of a contractor's work can be reviewed. If this information is not readily available, request the contractor provide points of contact.	Discussions with previous contracting officers, CORs, and P/PMs that worked with the contractor on a regular basis may provide insight into the contractor's performance on recent work.
Search for recent news about the company's performance (as appropriate).	Review articles and other publications for timely and relevant news about a contractor's performance or business integrity. ¹⁸ If warranted, search for pertinent contractor performance information in Government Accountability Office Reports available at www.gao.gov , and agency Inspector General (IG) Reports available on agency websites. Also, if necessary, review the company's past suspension and debarment record concerning incidents with other agencies and the EPA that are germane to the acquisition.	This information may uncover new information about recent performance or integrity issues that haven't yet been reported in PPIRS, or it may raise awareness about a performance risk that requires further explanation from the vendor.
Review reliable commercial sources of performance information (as appropriate).	In addition to PPIRS, agencies can also use public and commercial databases, or related services, to gain a fuller understanding of a contractor's performance. Some of these companies provide business reviews, past performance reports, consumer evaluations, contractor management reports, and other information that might be helpful in assessing a contractor's ability to perform the contract successfully.	This information may be helpful in evaluating the capabilities of small or new businesses that have not had the opportunity to demonstrate their performance on federal contracts.
Ask for a wide variety of references.	Request that offerors provide at least three to five references of recently completed relevant contracts or orders (within the last three to five years) from Federal, State, local and/or foreign government, and by commercial firms, business partners, subcontractors, etc.	Learning about a vendor's performance on a wide variety of contracts may be useful in determining if an experienced contractor's performance is consistent, and it will help provide small and new businesses with little or no Federal

		experience a fair opportunity to compete.
Past Performance: Ask for information about sub-contractors and contractor team arrangements.	Request that prime contractors provide past performance information on subcontractors and contractor team arrangements.	This will give the source selection official a complete view and better understanding of the prime contractor's, the subcontractor's and any contractor team arrangement's performance capabilities.

L. How is the Information Presented to the SSA?

When the SSA is the contracting officer, the TEP chairperson shall present the findings to the contracting officer. When the SSA is not the contracting officer, upon completion of the evaluation of all offers received, the TEP chairperson and the contracting officer shall be responsible for presenting the evaluation findings to the SSA. The format of the presentation should be based on the SSA's preferences, and it may include a briefing with visual aids. In all cases, including when the SSA is the contracting officer, a written report shall be provided using the following guidelines:

-  Offerors **shall not** be ranked. Instead, provide ratings for each factor/subfactor for each offeror so that the SSA can make an independent assessment.
-  Provide a detailed summarization of the strengths, deficiencies, weaknesses, and risks of each proposal which resulted in the ratings for each factor/subfactor.
-  Provide a comparative analysis assessing the relative qualities of all proposals. This analysis must identify differences between proposals and the impact the difference will have on the Agency. This analysis should clearly provide the relative advantages and disadvantages of each proposal.

XII. Exchanges with Offerors

A. What are Exchanges with Offerors?

The FAR provides strict guidelines on how and when information can be exchanged with offerors after receipt of proposals. There are three types of exchanges allowed: clarifications, communications, and discussions. The contracting officer controls all exchanges with offerors. The following chart provides a comparison of the three types of exchanges:

	Clarifications	Communications	Discussions/ Negotiations
Purpose	Limited exchanges for clarification purposes only when award is to be made with No Discussions .	Limited exchanges Prior to the Competitive Range being established that are expressly for the purpose of determining if an offeror will be included in the competitive range.	Detailed exchanges After the Competitive Range is established for the purpose of conducting negotiations with the intent to allow an offeror to revise its proposal. Must be held with all offerors in the competitive range.
Examples of Types of Exchanges	<ul style="list-style-type: none"> • Relevance of an offeror's past performance. • Adverse past performance information. • Resolution of minor or clerical errors. 	<ul style="list-style-type: none"> • Ambiguities in proposal. • Apparent errors or omissions. • Relevance of an offeror's past performance. • Adverse past performance information. 	Identification of all deficiencies and weaknesses in offeror's proposal that, unless corrected, would prevent an offeror from having a reasonable chance for award.
Are Proposal Revisions Allowed?	No	No	Yes

XIII. Competitive Range Determinations

A. How do You Decide Whether to Award or Negotiate?

FAR 15.306 allows for award without discussions (negotiations) if the solicitation stated the intent to do so up front. Thus, upon completion of evaluations, the contracting officer, with the approval of the SSA, must make a determination whether to award without negotiations or establish a competitive range and conduct discussions with all offerors in the competitive range. In general, the decision to hold discussions should be made only if the evaluation shows a likelihood of the Agency receiving a substantial benefit from negotiations. The potential benefit should be weighed against the time and effort for both the Agency and the offerors. When the contracting officer does choose to award without discussions, the only type of exchange that may occur between the government and the offeror, in accordance with FAR 15.305, is a clarification, such as relevancy of past performance information or a response to negative past performance information to which the offeror has not previously had an opportunity to respond.

B. What is the Competitive Range?

When the decision is made to hold discussions, the determination of which offerors to hold discussions with and which to exclude from further consideration for award is known as the competitive range. The competitive range saves time and money for offerors who do not have a reasonable chance of receiving an award by excluding them from further consideration.

In accordance with FAR 15.306(c), the competitive range may be limited to the greatest number that will permit an efficient competition among the most highly rated proposals. This is a two-step process which consists of first identifying which

proposals are the most highly rated, and then determining whether that number is too large to permit an efficient competition. The determination of which offers are the most highly rated should be based on a comparison of the offers including cost/price and the capability of the offers. The Agency may not use a predetermined cutoff, e.g. only those proposals rated as Outstanding will be included. The basis for determining the competitive range must be based off the merits of the proposals received, considering both cost/price and non-cost factors (e.g. technical capability, past performance), rather than a random criteria determined in advance. Determining what is considered an efficient competition is based on how complex and time-consuming the negotiations are likely to be. The less complex, the easier it is to include more offers in the competitive range and still have efficiency. If substantial negotiations are required, it may be necessary to have a smaller number of offers in the competitive range. However, even when limiting the number based on efficiency, it is still important to distinguish between the proposals using some type of reasonable rationale. The difference is that the distinguishing factors may become smaller. All offers must be treated fairly, meaning that similarly situated offers may not be treated differently.

C. Who Determines the Competitive Range?

The contracting officer determines the competitive range with the SSA's approval and must complete a competitive range decision in writing with detailed rationale for the decision. The narrative should not rely solely on the TEP report or SSA evaluation briefing, but should instead provide sufficient narrative and detail to justify the decision being made. The document shall be signed by the contracting officer and approved by the SSA.

XIV. Discussions

A. What are Discussions?

Exchanges with offerors after the establishment of the competitive range are known as discussions, which are a form of negotiations. FAR 15.306(d) places a number of requirements on the government when holding discussions, including that they must be: 1) held with all offerors in the competitive range, 2) meaningful and 3) conducted in a manner that treats all offerors fairly. The goal of negotiations is to identify offerors' deficiencies and significant weaknesses to allow them the opportunity to submit the best offer possible, thereby ensuring the best value to the government. When holding discussions, the contracting officer should take care to point out all deficiencies and significant weaknesses in an offeror's proposal, and not just selected areas. Additionally, any deficiency or weakness that would prevent the offeror from receiving award, as well as adverse past performance information on which the offeror has not had a chance to comment, must be discussed. It is important that discussions are communicated in as much detail as necessary to ensure the offeror clearly understands the deficiency or weakness. Common discussion topics include, but are not limited to the following:

- ✚ Cost and Price
- ✚ Adverse past performance information to which the offeror has not had a chance to respond (mandatory)
- ✚ Apparent missing information from the proposal
- ✚ Resolution of uncertainties
- ✚ Delivery or performance issues
- ✚ Proposed special provisions
- ✚ Deviations to regulations
- ✚ Contractor assumptions
- ✚ Exceptions to the solicitation, such as certain provisions or clauses
- ✚ Conflicts of interest issues

B. How do you conduct discussions?

Discussions can be conducted in writing or orally. The form of discussions is contingent upon what is necessary to permit sufficient communication. Any information conveyed orally must be documented in writing and submitted to the offeror to ensure adequate understanding. Regardless of whether the discussions are accomplished in writing or orally, the contracting officer is responsible for conducting the discussions at all times. Prior to any oral discussions, the contracting officer will prepare an agenda and define the role of each attendee, including when each attendee is allowed to participate in the discussion.

C. What are the Limitations on Discussions?

FAR 15.306(e) places a number of limitations on all exchanges between the government and offerors. Additionally, any practice that might result in unequal treatment of offerors, such as those listed below, is prohibited.

- ✚ Unequal treatment: Principles of fairness require the Agency to ensure offerors are competing on an equal basis. Therefore, if it becomes clear during the negotiations that any part of the specifications are ambiguous and might result in offerors proposing on different bases, this area must be discussed with all offerors and clarified. Additionally, if the Agency gives information to one offeror that might affect a proposal, it must give the same information to all offerors.
- ✚ The Agency must not reveal an offeror's technical solution, or any other information that would compromise the offeror's intellectual property to another offeror.
- ✚ The Agency must not reveal an offeror's price without that offeror's permission. This includes discussing, disclosing, or comparing cost/price elements of another offer.
- ✚ The Agency must not reveal the names of individuals providing reference information about an offeror's past performance.
- ✚ The Agency must not knowingly furnish source selection information in violation of FAR 4.104.

D. How Do You Negotiate Cost and Price?

As noted above, FAR 15.306(e) prohibits revealing one offeror's price to another; however, it does allow the contracting officer to inform an offeror that its price is considered to be too high, or too low, and to reveal the results of the analysis supporting such a conclusion. Thus, full price negotiations with all offerors in the competitive range are allowed and encouraged. It is EPA policy for the contracting officer to identify any cost/price elements that do not appear to be justified and to encourage offerors to submit their most favorable and realistic cost/prices. The contracting officer shall question inadequate, conflicting, unrealistic, or unsupported cost information; differences between the offeror's proposal and probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear to be responsive to the requirements.

E. What are Proposal Revisions?

FAR 15.307 provides guidelines for proposal revisions during and after negotiations. There are two types of revisions: those that are made during the process of negotiations to "clarify and document understandings reached during negotiations," and final proposal revisions. The first type of revision is not mandatory, and it is only for the purpose of allowing the offeror to submit information that would demonstrate its capability or support its offer. Final proposal revisions, however, are mandatory and must provide a common cutoff date with sufficient time for all offerors in the competitive range to submit their final revisions. Generally, during final proposal revisions, offerors are allowed to alter any part of their original proposal and any revisions that were a result of negotiations. However, there are circumstances where the government may limit final proposal revisions to certain areas, such as revisions that are sought as a result of taking corrective action in response to a protest. Late final proposal revisions are subject to the same strict rules that are applied to late proposals in the applicable Instructions to Offerors provisions (FAR 52.215-1 or, for commercial acquisitions, FAR 52.212-1) and FAR 15.208.

F. What Happens after Final Proposals are Received?

After final proposals are received, they must be reevaluated in order to make the final source selection decision. Just like the original evaluation, the reevaluation must be done in accordance with the evaluation criteria in the solicitation and the rating methods discussed in section VIII above. Negotiations should not be reopened unless the final evaluation identifies an issue that might compromise the integrity of the source selection, such as a significant deficiency or weakness that was included in an offeror's original proposal but was not previously identified. If the contracting officer determines a need to reopen negotiations, this decision must be made in writing, reviewed by the Office of General Counsel, and approved by the SSA.

XV. Source Selection Decision

A. How is the Source Selection Decision Made?

After final proposals have been evaluated, the SSA must make an independent decision as to which offer represents the best value to the government. Thus, it is imperative that the SSA is well informed of the evaluation results. Therefore, the TEP chairperson and the contracting officer are required to follow the same presentation and documentation requirements included in section XII I above. The SSA shall make an independent decision based on a comparative assessment of the proposals against the stated evaluation criteria. The SSA shall not introduce any new factors or subfactors into the decision process. Trade-off decisions must be consistent with the evaluation scheme in the solicitation. The SSA shall not rely solely on the ratings assigned to the proposals, but instead, must compare the differences in non-price factors to the differences in price factors and consider the relative strengths, weaknesses and risks of each proposal. The following chart illustrates suggested steps when performing a comparative analysis.

Step 1	<ul style="list-style-type: none">• Identify individual proposal strengths and weaknesses.
Step 2	<ul style="list-style-type: none">• Analyze the impact of each offeror's strengths and weaknesses on the acquisition objectives in light of the relative importance of the evaluation factors.
Step 3	<ul style="list-style-type: none">• Compare proposal evaluations.
Step 4	<ul style="list-style-type: none">• Assess the best mix of of cost (or price) and non-cost benefits and determine whether the strengths of higher related proposals are worth the the price premium.

B. Does the SSA Have to Agree with the SSEB?

The SSA is not bound by the rankings, ratings, or recommendations of the SSEB as long as the SSA has a rational basis for a differing evaluation. Additionally, if the SSA determines that none of the proposals is in the best interest of the government, the SSA may reject all the proposals and cancel the solicitation. However, rejection of the proposals should not be taken lightly, and any decision to do so must be reviewed by the Office of General Counsel and approved by the Head of the Contracting Agency.

C. How is the Source Selection Decision Documented?

FAR 15.308 requires the source selection decision to be documented and include the rationale for any business judgments or tradeoffs. At the EPA, a written Source Selection Decision Document (SSDD) is required for all source selections, regardless of dollar value or source selection method utilized. The SSDD will be

prepared collaboratively between the contracting officer and TEP chairperson, and it must be signed and approved by the SSA. When the SSA determines that the best value is other than the lowest cost/priced offer, the SSDD must clearly state the benefits the Agency will receive for paying the premium price, and why it is in the Agency's best interest to expend the additional funds. The SSDD will become a part of the official contract file and may be released, with the exception of any information that is exempt under the Freedom of Information Act. A sample SSDD, as well as tips for writing SSDDs, can be found on the OAM Knowledge Management Site.

D. What Must be Included in the Source Selection Decision Document?

At the EPA, all SSDDs will include the following information:

Determination	<ul style="list-style-type: none"> • This is a statement by the SSA determining which offer constitutes the best value to the Agency.
Description of Requirement	<ul style="list-style-type: none"> • Briefly describe the product or service being procured.
Evaluation Process	<ul style="list-style-type: none"> • Describe the evaluation process that was used including a list of all factors and subfactors evaluated, their relative importance to each other and the rating method used to evaluate them.
List of Offerors	<ul style="list-style-type: none"> • List all offerors that were included in the competitive range.
Proposal Evaluation	<ul style="list-style-type: none"> • Provide a detailed summary of the results of the proposal evaluations including ratings for all offerors for all factors/subfactors.
Summary Determination	<ul style="list-style-type: none"> • Provide the award rationale by describing the tradeoffs made between the factors/subfactors of each offerors' proposal within context of relative importance of factors.

XVI. Award

A. When Can the Contract be Awarded?

After the SSA has signed the SSDD, the contracting officer may award the contract to the successful offeror. However, the contracting officer must first make any required clearances and notifications, including Equal Employment Opportunity (EEO) clearance when required by FAR 22.805; the congressional notifications

required IAW FAR 5.303; the SBA notification for Section 8(A) Set Asides IAW FAR 19.804; and for Small Business Programs, the apparent unsuccessful offerors shall be provided the pre-award notice required by FAR 15.503.

XVII. Notices to Unsuccessful Offerors

A. How Do You Notify Unsuccessful Offerors?

The contracting officer must notify the unsuccessful offerors in writing within the timeframe identified in FAR 15.503 after contract award or whenever their proposals are eliminated from the competition. The type of information that must be included in the notice will depend upon whether it is sent before or after contract award. The chart below provides a side-by-side comparison of the differences between pre-award and post-award notices.

	PRE-AWARD NOTICE FAR 15.503(a)	POST-AWARD NOTICE FAR 15.503(b)
Who must be notified?	Any offeror whose proposal was excluded from the competitive range or otherwise eliminated from the competition before contract award.	Any offeror whose proposal was in the competitive range but was not selected for award or who had not received a pre-award notice.
When must it be sent?	Promptly after the offeror's proposal was eliminated from the competition unless urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805-2).	Within three days after the date of contract award.
What is included in the notice?	<ul style="list-style-type: none"> • A summary of the basis for the determination • A statement that the Government will not consider any further proposal revisions from the offeror. <p>Note: Small business offerors are entitled to additional information, as described at FAR Part 15.503(a)(2). After contract award and upon request from an offeror who previously received a pre-award notice, the PCO must provide the offeror the information normally provided as part of a post-award notice.</p>	<ul style="list-style-type: none"> • Number of proposals received. • Name(s) and address(es) of awardee(s) • Items, quantities, and unit prices of each awardee. If listing the unit prices is impracticable, include only the total contract price. (However, upon request, the items, quantities, and any stated unit prices of each award shall be made publicly available.) • A summary of the reason(s) the offeror's proposal was not selected, unless the price information readily reveals the reason. • Notice of right to request a debriefing

XVIII. Debriefings

A. What is a Debriefing?

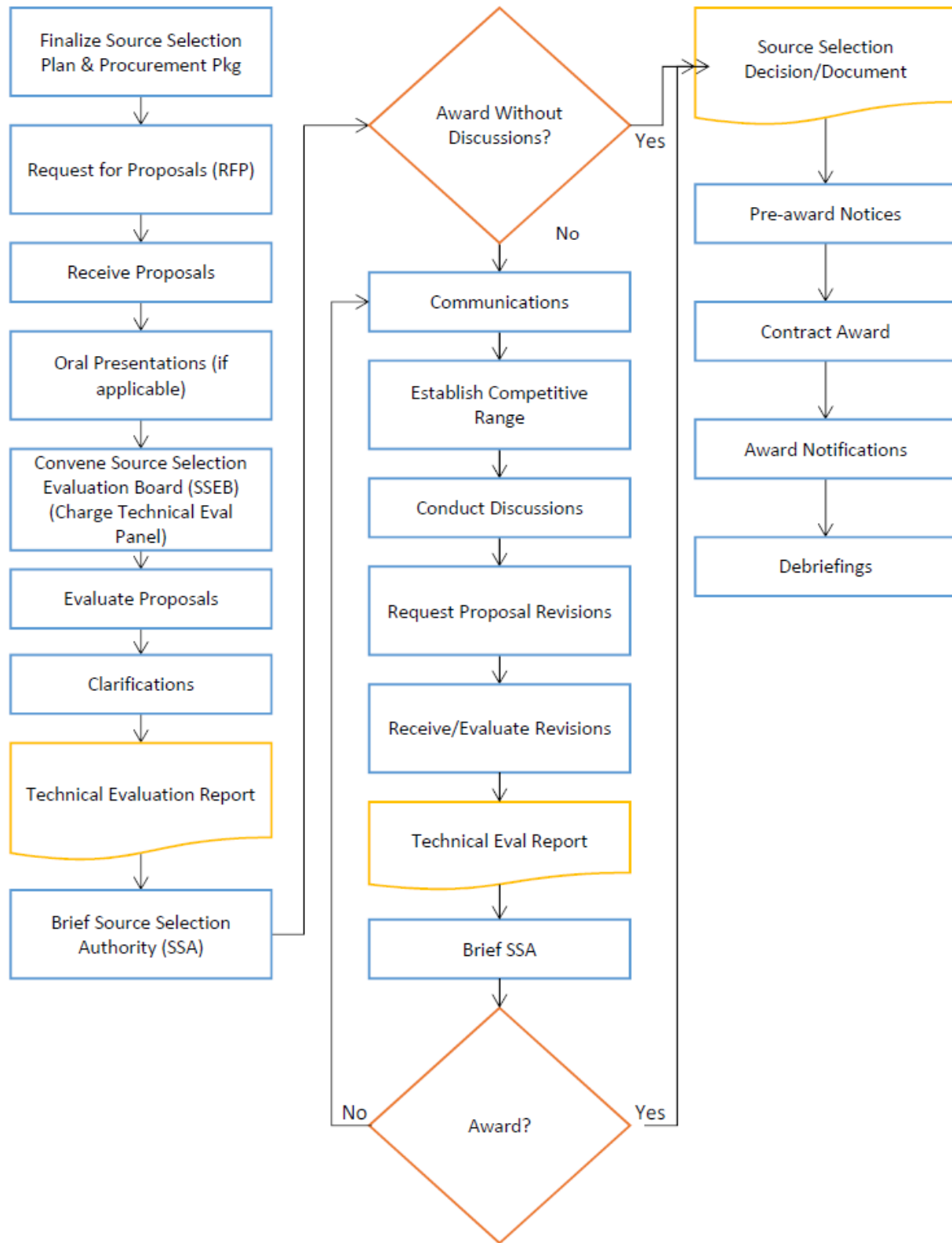
There are two types of debriefings – pre-award and post-award. Each unsuccessful offeror is entitled to one debriefing, either orally or in writing.

B. When and how do You Give a Debriefing?

The chart below outlines when each type of debriefing is appropriate and what may and may not be disclosed at each. Of the two types, the pre-award is more restrictive in terms of what may be disclosed to the unsuccessful offeror since the procurement is still on-going at the time of the debriefing.

	PRE-AWARD DEBRIEFING FAR 15.505	POST-AWARD DEBRIEFING FAR 15.506
Who is entitled to a debriefing?	Offerors excluded from the competitive range or otherwise excluded from the competition before award.	Any unsuccessful offeror who has not had a pre-award debriefing.
When must the Agency conduct a debriefing?	As soon as practicable after receipt of a timely, written request. However, the contracting officer may refuse the request for a pre-award debriefing if it is not in the best interest of the Government. Offerors may request the debriefing be delayed until after contract award.	To the maximum extent practicable, within 5 calendar days from receipt of a timely, written request.
What is a timely request?	A request received within 3 calendar days after notification of elimination from the competitive range.	A request received within 3 calendar days after notification of contract award.
What cannot be disclosed?	<ul style="list-style-type: none"> • Number of offerors • Identity of offerors • Content of other offerors proposals • Comparisons to other offerors • Information prohibited from disclosure by FAR 24.202 or information exempt from release under the Freedom of Information Act 	<ul style="list-style-type: none"> • Point by point comparison to other offerors' proposals. • Government Cost Estimate • Information prohibited from disclosure by FAR 24.202 or information exempt from release under the Freedom of Information Act.
What should be discussed?	<ul style="list-style-type: none"> • Details regarding the evaluation of the offeror's proposal in relation to the evaluation criteria, including strengths and weaknesses. • A summary of the rationale for eliminating the offeror from the competition. • Responses to reasonable questions regarding the source selection procedures and evaluation criteria. 	<ul style="list-style-type: none"> • Details regarding the evaluation of the offeror's proposal in relation to the evaluation criteria, including strengths and weaknesses. • The overall evaluated cost/price and technical rating, if applicable, of the successful offeror and the debriefed offeror. • A summary of the rationale for award. • For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror. • Responses to reasonable questions regarding the source selection procedures and evaluation criteria.

Source Selection Process



EPAAG 15.3.1

APPENDIX B

Technical Evaluation Guide

DECEMBER 2016

Office of Acquisition Management, Policy Training & Oversight Division

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I. Purpose

This guide provides policies, procedures and guidelines for EPA Source Selection Evaluation Boards (SSEB) when conducting technical evaluations. It is designed to be used in conjunction with the [EPA Acquisition Guide \(EPAAG\)](#) Section 15.3.1 Appendix A, Source Selection Guide (SSG). Therefore, it is essential that personnel using this Guide familiarize themselves with the SSG.

II. Background

The SSG provides policies and procedures for conducting source selections at EPA. Roles and responsibilities are outlined in the SSG including those of members who serve on the SSEB. The SSEB is a group of government personnel that assist in the development of the Source Selection Plan and evaluate proposals to ensure a comprehensive evaluation of offers. The Technical Evaluation Panel (TEP) is a subset of the SSEB and is responsible for evaluating technical proposals. General information related to how and when members are appointed to a TEP panel, as well as source selection guidance in general, can be found in the SSG. This Technical Evaluation Guide focuses strictly on the technical evaluation process itself. The TEP's evaluation and subsequent documentation is essential to ensuring the Agency receives quality goods and services. The TEP's detailed technical analysis report will be used by the Source Selection Authority (SSA), along with other analyses, to select the offeror that provides the best value to the government. Details from the report are also used to help debrief unsuccessful offerors.

III. Policy

This guide is fully consistent and compliant with the [Federal Acquisition Regulation](#) (FAR), the Environmental Protection Agency Acquisition Regulation (EPAAR) and the EPAAG. In the event of an apparent conflict between this guide and the FAR/EPAAR, the FAR/EPAAR will govern and take precedence. In the event of an apparent conflict between this guide and other EPAAG sections, contact the Office of Acquisition Management (OAM) [Acquisition Policy Training Service Center](#) (APTSC) for clarification by sending an email to OAM-Acquisitionpolicy@epa.gov. The policies and procedures in this guide apply to all negotiated competitive acquisitions which utilize FAR Part 15 and EPAAR Part 1515. This guide does not apply to the acquisitions listed below; however, personnel should use the basic principles of this guide for technical evaluations under these types of acquisitions as applicable.

- Sole source acquisitions (FAR 6.3);
- Basic Research and Development acquisitions where Broad Agency Announcements (BAAs) and Program Research and Development Announcements (PRDAs) are required in support of a specific project (FAR 35);

- Acquisitions using sealed bidding procedures (FAR 14);
- Acquisitions using simplified acquisition procedures (FAR 13);
- Acquisitions using streamlined procedures for commercial items (FAR 12.6);
- Acquisitions for architect-engineer services (FAR 36);
- Orders placed under indefinite-delivery contracts (FAR 16.505); or
- Orders placed under Federal Supply Schedules contracts (FAR 8.4).

IV. TEP Member Roles and Responsibilities

A. How are team members selected/appointed to the TEP?

As discussed in the SSG, all TEP members must be appointed in writing by the SSA. When appointing team members, the SSA shall designate voting and non-voting members. Voting members typically consist of the TEP chairperson and technical experts. Advisors shall be non-voting members. Non-government personnel may provide TEP support but may not be voting members.

B. Who/What is the Chairperson?




The TEP chairperson is appointed by the SSA and is generally a technical person assigned to the acquisition, such as the contracting officer's representative (COR). The chairperson is responsible for managing the overall technical evaluation process to include ensuring milestones are met, scheduling evaluation meetings, leading discussions during the meetings, and ensuring the completion of a clear and complete evaluation report.

C. What qualifications must TEP members have?

All members of the TEP must be highly competent in their areas of subject matter expertise. Either the TEP chair, or another member of the TEP, must have excellent writing skills that can be used to document the evaluation. TEP members must also possess the skills and ability to carry out their tasks in a professional manner and be free of bias or any conflicts of interest. Examples of major conflicts of interest that must be avoided include any financial interests in the anticipated and/or actual firms that are proposing, including engaging in employment discussions with offerors. If a member of the TEP has an actual or apparent conflict of interest or bias at any time during the procurement, that person shall be removed from the TEP.

D. What Responsibilities do TEP Members Have?

TEP members are responsible for the following:

-  Familiarize themselves with the requirements of the solicitation including the Statement of Work (SOW)/Performance Work Statement (PWS) and the evaluation criteria.
-  Sign a Source Selection Information Briefing Certificate.
-  Sign a Non-Disclosure Agreement and Conflict of Interest Certificate.

- ✚ Consider duties under the TEP to be a primary responsibility.
- ✚ Ensure that the TEP evaluates each proposal solely on the evaluation criteria included in the solicitation and is not compared to other proposals. Only after this is completed and only at the SSA request, request a comparative analysis of the proposals and make recommendations.
- ✚ Follow all evaluation procedures provided in this guide and the SSG.
- ✚ Shall not hold any conversations with or answer questions from offerors or any other person not part of the TEP. All questions shall be referred to the contracting officer (CO).
- ✚ Provide the consolidated evaluation results to the designated chairperson.
- ✚ Support any post source selection activities such as debriefings and post-award reviews/meetings, as required.

E. What are the Contracting Officer's Responsibilities?

CO's proposals. Specific duties related to the TEP include the following:

- ✚ Serve as the primary business advisor for the TEP.
- ✚ Ensure that FAR Part 15 and Agency required approvals are obtained before non-government personnel are allowed to provide TEP support.
- ✚ Assist the SSA in appointment of TEP members (including substitutions of members).
- ✚ Ensure members of the TEP have signed Non-Disclosure Agreements and Conflict of Interest Certificates and are knowledgeable of their responsibilities before being provided with any source selection sensitive information, e.g. proposals, cost information, etc.
- ✚ Ensure the evaluation process follows the evaluation criteria and ratings process included in the solicitation.
- ✚ Ensure the TEP only performs comparative analyses of proposals and only makes source selection recommendations at the request of the SSA.
- ✚ Ensure the TEP adequately documents its evaluation, and ensure all documentation requirements in the FAR, EPAAR and this guide are followed.
- ✚ Control exchanges and discussions with offerors in accordance with FAR Part 15 after receipt of proposals.
- ✚ Ensure that procedures exist to safeguard source selection information in accordance with FAR 3.104.
- ✚ Maintain source selection evaluation records. When evaluation information developed by any member of the source selection team is presented in any form to the SSA, the evaluation information and any related supporting material becomes an official record that must be maintained and not altered. Updates, revisions, or changes to that evaluation information must be captured in subsequent documentation in such a way that the original record

remains distinct. Evaluation materials are considered working papers prior to their disclosure to the SSA. Those working papers may be changed or modified by their author, as necessary, to support the evaluation process.

- ✚ Lead all post source selection activities such as debriefings and post-award reviews/meetings.

F. What/Who are Advisors?

The CO (with the SSA's approval) may appoint advisors as necessary to assist in the technical evaluation. The use of advisors should be kept to a minimum, and they shall be selected based on the experience and expertise they can provide to the SSEB. They may participate in discussions amongst the TEP, but they shall not unduly influence the source selection or determine ratings or rankings of offerors' proposals. Examples of advisors include senior acquisition personnel within the Office of Acquisition Management, the Office of Small Business Programs, and the Office of General Counsel who may provide advice within their areas of expertise. When necessary, it is acceptable to appoint an advisor with specific technical expertise that falls outside the experience of other members of the TEP; however, in general, the TEP shall consist of personnel with the requisite experience and knowledge to evaluate proposals. Use of non-government personnel as advisors may be authorized; however, this practice should be limited. Additionally, the use of non-government personnel as advisors in a source selection shall be supported with a written determination in accordance with FAR 37.204. . Note: appointment letters are not necessary for senior acquisition personnel; however, they are required for all other advisors.

V. Procurement Integrity

All TEP members must be familiar with and comply with the requirements and prohibitions set forth in FAR 3.104, Procurement Integrity. All TEP members must complete and sign Non-Disclosure and Conflict of Interest certificates prior to receiving and evaluating proposals.

TEP members must maintain confidentiality throughout and after the source selection process. All information contained in the proposals submitted for evaluation must be protected, shall be used only for the purposes of evaluating proposals, and shall be available only to members (voting and non-voting) of the TEP who have been appointed in writing by the SSA. The right to information access **does not** extend to the normal chain of supervision of any member of the TEP or to an individual having technical responsibility for the effort being evaluated.

TEP members shall not discuss any aspect of offerors' technical proposals or the technical evaluation with anyone outside the TEP or formally appointed advisors. This includes revealing the number of offerors and their identities. Any inquiries shall be referred to the CO immediately.

TEP members shall not conduct any dialog with potential offerors, including any incumbent(s), regarding the procurement at hand, unless specifically authorized by the CO. Doing so could potentially compromise the integrity of the source selection and may result in the actual or appearance of the creation of an unfair competitive advantage to an offeror.

All TEP documents shall be marked "Source Selection Information - SEE FAR 2.101 and 3.104." All documentation within the work area will be secured when not under the direct control of authorized personnel. No document will be removed from the work area for any purpose without specific authorization from the CO. Upon conclusion of evaluations, members shall retain any working papers, notes etc. that were used as part of the consensus. These papers shall be made available to the contracting officer upon request.

TEP members must certify they have no perceived or actual conflicts of interest which would prevent them from being non-biased parties in the source selection. Evaluators who have a familial, financial or business interest in any offeror must disclose the following information to the CO:

- (1) The nature of the relationship involved. If the business or financial interest is held by a family member, please identify the relationship of the family member(s) to yourself and identify whether the individual(s) is/are living within the same household as you.
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship.

Additionally, Government officials and employees are statutorily prohibited from participating personally and substantially in any matter which would affect the financial interests of any person with whom the employee is seeking employment. Any contact with an offeror during the conduct of an acquisition may constitute "seeking employment" as defined by FAR 3.104-3(c)(2). TEP members must notify the CO if they have been contacted by, are seeking employment with, or have an arrangement concerning future employment with an offeror.

VI. Overall TEP Process

Step 1: Upon receipt of proposals, the CO will review all proposals to ensure they are compliant with the solicitation (see details in SSG) and prepare them for distribution to TEP members. In an effort to reduce paper usage, proposals shall be distributed electronically in a secure fashion. This can be done through EAS or a secure email. Additionally, use of the OneDrive is authorized for this purpose. OneDrive files are encrypted and stored in Microsoft's secure government Web space, just like EPA email. TEP members should never store proposals on a personal or other non-government computer. Additional details about how to send a secure email or use the OneDrive Security are available can be found [here](#).

Step 2: Prior to distributing proposals, the CO will charge the TEP with explicit instructions for performing the evaluations in accordance with the criteria specified in the solicitation. The CO will provide TEP instructions both verbally and in writing before reviews begin. A sample TEP charging document can be found on the [OAM Knowledge Management SharePoint Site](#) in the Source Selection Toolkit. (Note, in order to access the SharePoint Site, you have to be logged into MyWorkplace.)

Step 3: Upon receipt of proposals, TEP members will be given a designated amount of time to read and individually assess the proposals prior to meeting with other members to form a consensus. All TEP members **must** be familiar with the solicitation requirements including the SOW/PWS, the evaluation criteria, and any amendments to the solicitation such as Questions and Answers. Each member of the TEP shall individually read each proposal in its entirety and conduct an independent assessment as to whether the proposal conforms to the evaluation criteria. This individual assessment must be done **prior** to the consensus meeting. It can be helpful to hold check-in meetings during this stage of evaluation to ensure all TEP members are on track and understand the process. However, consensus type discussions shall be kept to a minimum during this stage of the evaluation to ensure each TEP member has the opportunity to complete an independent assessment.

Step 4: Upon completion of individual evaluations, a consensus meeting will be held to determine overall ratings for each offeror for each factor and/or subfactor included in technical capability. The meeting may be held in person, telephonically, online via Adobe Connect, or any other manner that is conducive to a productive meeting and has been approved in the source selection plan (see SSG for guidance on source selection plans). All voting members must be present at the consensus and 100 percent of their time dedicated to the evaluation. During the consensus discussion, the TEP chairperson shall ensure that all members of the TEP provide input to each factor/subfactor for which they have been appointed to evaluate. Discussions must continue until the TEP reaches an overall consensus on the rating for each factor/subfactor for each offeror.

Step 5: Upon reaching a consensus, the TEP chairperson shall prepare a report for the SSA detailing the consensus rating for each Technical Capability factor/subfactor for each offeror. Details regarding the format and content of the report are provided below in Section VII. No formal documentation is required of individual evaluators; however, all TEP members must sign the report. Evaluators may take narrative notes, but it should be noted that should the subsequent award be protested to the Government Accountability Office or the Court of Federal Claims, these notes are discoverable and may be provided to the protestor's attorneys. These individual notes are not returned to the CO for inclusion in the official contract file; however, they shall be retained and must be made available upon the CO's request.

VII. Technical Evaluation & Ratings

A. How are Proposals Evaluated/Rated?

The TEP members shall evaluate proposals by assessing the relative qualities of proposals based solely on the factors and subfactors specified in each solicitation. TEP members shall not compare one offeror to another. Instead, each member shall identify the strengths, risks, weaknesses, significant weaknesses, and deficiencies associated with each proposal based upon the evaluation factors and be prepared to discuss these with the rest of the TEP to determine a consensus rating. The following definitions are provided to assist with this process.

Type	Description
Strength	An aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.
Risk	The potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an offeror's proposed approach to achieving the technical factor or subfactor may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.
Weakness (FAR 15.001)	"...a flaw in the proposal that increases the risk of unsuccessful contract performance."
Significant Weakness (FAR 15.001)	"...a flaw that appreciably increases the risk of unsuccessful contract performance."
Deficiency (FAR 15.001)	A material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

B. What are some tips for drafting strengths, weaknesses, risks, etc?

- ✚ It's important to document whether the offeror met the requirement and if so how. However, if something just meets the requirement, do not label it a strength. A true strength is something that exceeds the requirement and will benefit the Government by improving the chance of successful contract performance, (i.e., decreases risk.)
- ✚ For weaknesses, be sure to look at the definition of a risk vs a weakness. A risk has to do with an offeror's proposed approach vs a flaw in the proposal. The offeror's proposal may be acceptable but pose certain risks. For example, an offeror may be offering a new technology that may be beneficial but at the same time pose risk since it is untested. Conversely, a weakness is an actual flaw in the proposal increases risk. When describing a weakness, be sure to explain how it fails to meet the requirement and how this increases the risk of unsuccessful contract performance.
- ✚ For all findings, be sure to state the evaluation factor/subfactor and associated SOW/PWS requirement, if applicable. A page number or specific Paragraph Number MUST accompany the SOW and/or SPEC language (direct quote or paraphrase SOW and/or SPEC language).
- ✚ Quote the specific language from the offeror's proposal that addresses or fails to address the SOW and/or SPEC requirement. The specific proposal language or an accurate summary of what the Offeror proposed AND applicable page number MUST be included under the strength or weakness.
- ✚ Use descriptive sentences instead of bullets. For example:

Poor: Current teaming arrangements exceed minimum requirements.

Better: The offeror exceeds our requirements by signing MOUs and pre-negotiated subcontracts with key players (page 15). This is advantageous because it enables a quick start-up after contract award.

Poor: Proposed comprehensive risk management toolset is a strength.

Better: All team members (including subs) agree to use same risk tool (page 25). This is a significant benefit to the government because it makes the integrated risk assessment more efficient and further mitigates the overall risk to the government.

C. Should individual TEP members complete worksheets?

Using a worksheet specifically designed for the acquisition that lists the evaluation criteria and provides areas for taking notes can be helpful vs just taking notes. Worksheets are not required; however, if they are used, they should be developed prior to the review and approved by the CO. Sample formats for worksheets can be found on the [OAM Knowledge Management SharePoint Site](#). All worksheets must be retained and made available to the CO if requested.

D. Does each subfactor/factor receive an individual rating?

Yes, the SSG requires a rating for all factors and subfactors. To comply with this, each subfactor shall have an adjectival rating as well as the overall factor.

E. Can the TEP just take a vote as to who the highest rated offerors are?

No. Remember, the TEP's job is to evaluate proposals against the evaluation criteria and provide an analysis of this evaluation to the SSA for his/her use in selecting the successful offeror. In order to do this, the TEP must discuss and document the analysis of each proposal based on the criteria, including strengths, weaknesses, etc.

F. How can we make the consensus meeting more efficient?

It is recommended that TEP members provide comments/working papers to the chairperson to consolidate electronically before the consensus meeting occurs. The chairperson can then to distribute the copies to the CO and members prior to meeting to read and review. This will help facilitate discussions.

Additionally, rather than simply going around the room and having everyone provide all their notes from the individual evaluation, it is highly recommended that for each factor/subfactor, one member of the TEP share the strengths, weaknesses, etc, that he/she identified during individual evaluation. Then, one at a time, the other members can provide input as to whether they agree, disagree, have other strengths and weaknesses not listed, etc. This allows everyone to provide input but avoids unnecessary duplication. It does not matter which member shares their notes first. The chairperson can lead discussions by sharing his or her notes; the TEP member sharing notes can change per factor/subfactor based on expertise; or TEP members can take turns. Group dynamics will dictate how best to reach a consensus. The important thing is that all members participate and provide input.

G. What if the group cannot agree on a consensus?

While ideally the group will come to a consensus, if this is not possible, then this should be noted in the report with all opinions clearly outlined for the SSA.

H. What are some dos and don'ts to remember during the process?

The CO will provide detailed instructions when charging the TEP; particularly guidelines related to securing proposals, procurement integrity, and conflicts of interest. However, in general, there are a few guidelines to always follow.

- ✚ DO NOT only reiterate the technical evaluation criteria elements verbatim when explaining the review, e.g., "The offeror meets the requirement of.... (evaluation criteria element)." Explain How/Why the offeror demonstrated, fulfilled, or met the evaluation criteria requirement.
- ✚ DO NOT infer prior knowledge of an offeror into the evaluation, e.g., "They've proven they can do it in the past, even though they didn't address it here." The evaluator should only look at the written evidence in the proposal. We are evaluating the PROPOSAL to the CRITERIA.
- ✚ DO NOT downgrade a proposal because it did not address something that was not asked for in the solicitation. A thorough understanding of the SOW/PWS and Sections L and M of the solicitation will prevent this mistake.
- ✚ DO NOT compare different offerors' proposals to one another. Each proposal stands on its own merit, and is evaluated strictly in accordance with the solicitation evaluation criteria.
- ✚ DO NOT be influenced by the format or method of presentation by an offeror. Evaluate content and recognize the substantive quality of the proposal.
- ✚ DO NOT "read into" any portion of the proposal or interpret the meaning if there is any ambiguity. Understand the exact language appearing in the proposal. If a clarification is required to understand or interpret that portion of the proposal, document this in the final report.
- ✚ DO NOT form a "first impression" of an offeror that may be erroneously based on limited information. An offeror might be either "strong" or "weak" in one evaluated criterion but not necessarily the same in the other criteria. Do not let your assessment of one factor inappropriately taint your evaluation of another.

VIII. Technical Evaluation Report

A. How is the consensus documented?

Upon completion of the consensus, the TEP chairperson will ensure a detailed summarization of the strengths, deficiencies, weaknesses, and risks of each factor/subfactor for each proposal are included in a written report. The chairperson may choose to write the report or delegate the entire report or sections of the report to other members of the TEP. However, it should be noted that the latter practice, delegating to multiple people, can make the process more cumbersome and result in significant editing to ensure the report is consistent. It should be decided prior to consensus who will write the report. Additionally, one or more people should be designated up front to take detailed notes during the consensus that will be used to





formulate the report. It is recommended the notes be visible and shared with all TEP members during the process to ensure accuracy and consistency.

B. Does the report have to be in a certain format?

There is no mandatory format for the report; however, there are certain elements that must be in every report (see paragraph C below for more details). Therefore, it is recommended to use the template provided on the [OAM Knowledge Management SharePoint Site](#) under the Source Selection Toolkit.

C. What should be in the report?

The report should include the following:

-  **Proposal Evaluation Team:** State who the evaluation team was. If there was a formal source selection plan, it is adequate to state that the TEP consisted of the members approved in the source selection plan.
-  **Summary of Proposal Evaluation:** Using a table format, provide a summary of the consensus ratings for each offeror for each technical evaluation factor. Offerors **shall not** be ranked. Instead, list the offerors in the order evaluated or in alphabetical order.
-  **Summary of Individual Proposal Ratings:** For each offeror, provide a summary of the TEP consensus ratings for each technical factor/subfactor. This should include a visual chart showing the ratings as well as supporting rationale for each rating. Simple conclusive statements shall be avoided. Instead, all findings must be documented with specific examples that are relevant to the conclusion, that correlate to the offeror's proposal, and that clearly describe the TEP assessment of the proposal in a way that does not rely on reciting proposal contents. Describe all strengths, weaknesses, deficiencies, risks, and unknowns, and show a direct correlation between the finding to the evaluation criteria in Section M, the requirement, and the risk/benefit to the Government.
-  **Proposal Summaries:** For each offeror, provide an overview of each offeror's proposal evaluation to include a discussion of each technical factor. This should not duplicate the summary of individual proposal ratings, but rather summarize the overall evaluation for each offeror. This may be done as a separate section or in conjunction with the summary of individual ratings.

Section 15.4 – Contract Pricing

Subsection 15.4.1 - Negotiation Procedures (December 2019)

This subsection was previously Unit 15.2 of the Acquisition Handbook.

15.4.1.1 Purpose.

This subsection describes negotiation procedures for negotiated acquisitions issued under FAR Part 15 (other than commercial acquisitions addressed under FAR Part 12).

15.4.1.2 Background [Reserved].

15.4.1.3 Authority/Applicability.

The authority for this policy is based on FAR and EPAAR Subparts 15.3 and 15.4.

15.4.1.4 Definitions [Reserved].

15.4.1.5 Policy.

15.4.1.5.1 Negotiation Procedures for Acquisitions issued Under FAR Part 15

The following negotiation procedures apply to negotiated acquisitions issued under FAR Part 15 (other than commercial acquisitions addressed under FAR Part 12).

- (a) Preliminary Review. After receipt of proposals submitted in response to a solicitation, the contract specialist, cost analyst, Contracting Officer (CO), or Technical Evaluation Panel shall perform a review of the proposals to determine whether each offeror has followed the solicitation directions for preparing proposals. The review of the cost proposal should include a review of the number of hours, labor categories, and other direct costs.
- (b) Performance of Cost or Price Analysis. On procurements of \$500,000 or less, the CO is authorized to perform the cost or price analysis. If the action is over \$500,000, the Contracting Officer shall forward the proposals to the local cost advisory operations unless information available to the CO is adequate to determine the reasonableness of the proposed cost or price. The cost advisory operations shall either request audits on the proposals, perform an appropriate audit, or recommend to the CO that audit be waived because data is available through other means to perform a detailed analysis in-house. Termination settlement proposals shall be referred for audit when the proposal exceeds \$100,000 (see FAR 49.107).
- (c) Pre-negotiation Plan. Based on the results of the technical evaluation, a review of the proposals, and either audits or cost advisory reports, the contract specialist shall prepare a pre-negotiation plan for inclusion in the contract file. A sample format

is in Appendix 15.4.1-A. The plan shall address the planned disposition of all questioned and set-aside costs resulting from an audit.

- (d) Post-negotiation Summary. At the conclusion of each negotiation, the contract specialist shall promptly prepare a summary of the principal elements of the negotiation, using the Post negotiation Summary format (Appendix 15.4.1-B). The summary shall address the disposition of all questioned and set-aside costs resulting from an audit. The memorandum shall be included in the contract file.
- (e) Approvals. The CO shall approve the pre-negotiation plan prior to the start of negotiations. The CO shall approve the post negotiation summary prior to submitting the proposed contract award for review.
- (f) Distribution. The contract specialist shall provide cognizant cost advisory personnel with a copy of the post negotiation summary for each offeror who was audited. After completion of the negotiations, the cost advisory personnel shall distribute a copy of the post negotiation summary to both the EPA OIG Office of Audit and the office performing the audit.
- (g) Post award Audits. The Office of Acquisition Solutions (OAS) audit coordinator is responsible for notifying the appropriate EPA OIG Office of Audit Division on the disposition of the final audit report.

15.4.1.5.2 Negotiation Procedures for Fixed-Price Acquisitions for Supplies

The following procedures apply to fixed-price acquisitions for supplies. The contract specialist shall follow the procedures in paragraphs 15.4.1.5.1a through 15.4.1.5.1e above, except for the following:

- (a) The preliminary review of proposals will not include a review of the number of hours, labor categories, and other direct costs.
- (b) The contract specialist need not prepare the pre-negotiation position and the post negotiation abstract in accordance with the formats prescribed in Appendices 15.4.1-A and B. The CO shall ensure that the pre-negotiation position and the post negotiation abstract explain and support all significant negotiation objectives and the results achieved in negotiations.

APPENDIX 15.4.1-A PRENEGOTIATION PLAN

1. Solicitation #: ----- Date Issued: -----Date Closed:
2. Brief description of work:
3. Proposed type of contract:
4. Period of performance/delivery schedule (list option periods separately):
5. Amount of funds available:
6. Date synopsised in CBD: ----- , or exception:
7. Procurement set-aside (small business, labor surplus area, 8(a)):
8. Number of firms solicited: ___ ___ No. responding:
9. Late proposals and disposition:
10. Name of firms in competitive range:
11. Clearances required/obtained:
12. Unique features of acquisition:
13. Technical Evaluation Reports (title and date):

14. Narrative: (Include a brief discussion of each element of cost for each proposal using the pre-negotiation position form. The discussion shall explain and support the Government's pre-negotiation objectives, including the proposed resolution of any questioned costs or costs set-aside in an audit. The CO/specialist shall attach a copy of the profit/fee objective using EPA Form 1900-2 with a brief description of the weights assigned.)

15. Other objectives: (Discuss any special provisions, such as cost-sharing, data rights, deviations to contract clauses and provisions challenged by the offeror, technical discussions, etc.)

16. Socioeconomic Requirements: (Discuss whether incentives or subcontracting goals are involved.)

17. Subcontracts: (Discuss any anticipated subcontractor problems and any special subcontract provisions.)

18. Government-furnished property: (Is property to be authorized in the contract? Were proper justifications prepared?)

19. Method of Payment: (progress payments, letter of credit, advance payment, incremental funding, pre-contract costs authorized.)

20. Summary of audit reports received.

Name of Offeror	Audit Report Number	Name/Address of Audit Office	Questioned/ Set-Aside Costs	Remarks
--------------------	------------------------	---------------------------------	--------------------------------	---------

21. Other information:

Prepared by:

Signature: _____

Date:

Approval:

Signature: _____

Date:

PRE-NEGOTIATION POSITION**Offeror:****A. Base Period**

	Cost Element	Proposed	Objective	Narrative
1.				
2.				
3.				
4.				
5.				
6.				
7.	Subtotal			
8.	Fee/Profit			
9.	Total			

B. Option Period 1

	Cost Element	Proposed	Objective	Narrative
1.				
2.				
3.				
4.				
5.				
6.				
7.	Subtotal			
8.	Fee/Profit			
9.	Total			

C. Option Period 2

	Cost Element	Proposed	Objective	Narrative
1.				
2.				
3.				
4.				
5.				
6.				
7.	Subtotal			
8.	Fee/Profit			
9.	Total			

D. Total (maximum contract all options)

1. Total Est. Cost 2.

Fee/Profit

3. Total Including Fee/Profit

(NOTE: a separate sheet is required for each offeror in the competitive range)

**APPENDIX 15.4.1-B
POST NEGOTIATION SUMMARY**

1. Name of Offeror:
2. Solicitation Number:
3. Date of Negotiation: Opened: ----- Closed:
4. Purpose of Negotiation: _____
5. Name, position, and organization of Government employees involved in negotiation:
6. Name, position, and organization of contractor employees involved in negotiation:
7. Status of contractor's purchasing system (if applicable):
8. Was certified cost or pricing data required? _____ If
yes, date certified as accurate, complete, and current;
9. Was this data relied on in negotiating cost/price?
If not, why not?
10. Did members of Congress, other agencies or higher-level officials not normally
involved in the award and review process have significant effect on this action?
If yes, explain.
11. Basis for determining the profit or fee if different from the pre-negotiation objective:
12. Are subcontracts/consultants to be approved in the contract document? _____ If
yes, list subcontractors/ consultants:
13. Was subcontractor certified price data received (cite waiver if applicable):
14. Have all required representations and certifications been completed?
15. Narrative: (Include a discussion for each cost element where the final agreed to cost
elements differs from the Government's pre-negotiation objective. The discussion shall
provide a thorough rationale for arriving at the negotiated amount.)

16. Technical negotiations: (Include a discussion of any technical negotiations held.)

17. Name of selected offeror:

SELECTED OFFEROR ONLY

18. Is offeror debarred, ineligible, or suspended?

19. Has the Equal Employment Opportunity program been approved?

20. Does the offeror meet the responsibility standards of FAR Subpart 9.1? _____

21. Other information:

Prepared by:

Signature: _____ Date: _____

Approval:

Signature: _____ Date: _____

POSTNEGOTIATION ABSTRACT

Offeror:

A. Base Period

	Cost Element	Proposed	Objective	Narrative
1.				
2.				
3.				
4.				
5.				
6.				
7.	Subtotal			
8.	Fee/Profit			
9.	Total			

C. Option Period 2

	Cost Element	Proposed	Objective	Narrative
1.				
2.				
3.				
4.				
5.				
6.				
7.	Subtotal			
8.	Fee/Profit			
9.	Total			

D. Total (maximum contract all options)

1. Total Est. Cost 2.
Fee/Profit

3. Total Including Fee/Profit

(NOTE: a separate sheet is required for each offeror in the competitive range)

Section 15.6 - Unsolicited Proposals

Subsection 15.6.1 - Unsolicited Proposals (April 2004)

This section was previously Section 15.1 of the Contracts Management Manual.

15.6.1.1 Purpose.

This section establishes a centralized control and procedure for the receipt, accounting, and processing of unsolicited proposals.

15.6.1.2 Background [Reserved].

15.6.1.3 Authority/Applicability.

The authority for this section is based on the procedures prescribed in Federal Acquisition Regulation (FAR) Subpart 15.6, Unsolicited Proposals.

15.6.1.4 Definitions.

An unsolicited proposal is defined in FAR 2.101. It means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovative Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

15.6.1.5 Policy.

Proposals are voluntarily submitted by individuals and various types of organizations having scientific and technological ideas which they feel will contribute to the success of the EPA mission. Many of these proposals may be of little or no value to EPA. However others may be substantially beneficial and may therefore merit EPA support in the form of a grant or contract.

15.6.1.5.1 Centralized Control Point

A centralized control point is located in the Grants Administration Division to process unsolicited proposals regardless of where they are received in EPA. To fully utilize the source of scientific and technical information being submitted, the Agency should encourage the submission of unsolicited proposals and should promptly acknowledge receipt of a proposal. The proposal will then be evaluated for its scientific merit and relevance to EPA programs.

15.6.1.5.2 Procedure

- (a) Unsolicited proposals received by any organizational element of EPA shall be forwarded immediately to the Grants Administration Division for official receipt and processing.

- (b) The Grants Administration Division will: (1) acknowledge receipt to the person or organization submitting the proposal; (2) assign a proposal control number; and (3) transmit the proposal to the appropriate program office for evaluation.
- (c) If the proposal is to be funded as a grant, the proposal will be returned to the Grants Administration Division for further processing. If the proposal is to be funded by contract, a procurement request will be forwarded to the appropriate contracting office.

15.6.1.5.3 Disclosure and Use of Proposal Data

- (a) Because of the "proprietary rights" involved in unsolicited proposals, ethical and legal considerations impose restrictions on the disclosure and use of data submitted with the proposal.
- (b) The Grants Administration Division is authorized to copy, photograph, or reproduce in any manner any part of an unsolicited proposal. All other organizational elements of EPA must obtain approval from the Grants Administration Division before duplicating information from unsolicited proposals.

15.6.1.5.4 Award Without Full and Open Competition

Although contracts resulting from unsolicited proposals may be awarded without full and open competition, the unsolicited proposal does not, in and of itself, justify such action. Award of a contract without full and open competition must be justified as prescribed in FAR Part 6 and EPA Acquisition Regulations (EPAAR) Part 1506, "Competition Requirements."

CHAPTER 16 – TYPES OF CONTRACTS

Section 16.1 – Selecting Contract Types

Subsection 16.1.1 – High-Risk Contracts (May 2018)

16.1.1.1 Purpose.

To guard against inefficiency and waste and improve EPA’s ability to obtain quality supplies and services on time and within budget, this subsection provides guidance on reducing the use of high-risk contracting authorities.

16.1.1.2 Background.

The March 4, 2009, Presidential Memorandum on *Government Contracting* reports that high-risk contracts have been misused across the federal government, resulting in wasted taxpayer resources, poor contractor performance and inadequate accountability. Office of Management and Budget Memorandum M-09-25, *Improving Government Acquisition*, issued on July 29, 2009, requires agencies to act to reduce the use of high-risk contracting authorities.

16.1.1.3 Authority/Applicability.

This subsection is issued in accordance with Federal Acquisition Regulation (FAR) 1.301(a), EPA Delegations Manual Chapter 1-2, and the below referenced documents:

- President’s Memorandum, *Government Contracting* (March 4, 2009)
- Office of Management and Budget Memorandum M-09-25, *Improving Government Acquisition* (July 29, 2009)
- Office of Federal Procurement Policy Memorandum, *Increasing Competition and Structuring Contracts for the Best Results* (October 27, 2009)
- General Accountability Office Report GAO-12-57, *Federal Contracting-OMB’s Acquisition Savings Initiative Had Results, but Improvements Needed* (November 2011)
- EPA Office of Inspector General Report No. 18-P-0038, *Improved Acquisition Planning Will Help EPA Reduce Hundreds of Millions of Dollars in High-Risk Contracts* (November 15, 2017)

16.1.1.4 Definitions.

“Risk” is the assumption of responsibility for possible monetary loss or gain in view of the job or work to be done. FAR 16.103 indicates that risk be a major consideration in determining the type of contract under which performance will occur.

“High-risk” contracts, as defined in Office of Management and Budget Memorandum M-09-25, *Improving Government Acquisition* (July 29, 2009), are:

- Contracts awarded non-competitively,
- Contracts receiving only one offer in response to a competitive solicitation,
- Cost-reimbursement type contracts, and
- Time-and-materials/labor-hour contracts.

16.1.1.5 Policy.

FAR 16.103(d)(1) states that “Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures.” FAR 16.103(d) provides a detailed list of requirements that the documentation must include.

FAR 7.105(b)(3), *Contents of Written Acquisition Plan*, states that contracting officers shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection, while EPAAG 7.1.1.5.5, *Acquisition Planning*, discusses the use of the EPA Acquisition System (EAS) for documenting contract type.

When selecting contract type, contracting officers should be aware that cost-reimbursement, time-and-materials, and labor-hour contracts pose special risks of overspending because they provide no direct incentive to the contractor for cost control.

While these contract authorities are important tools when used appropriately, they are vulnerable because they can be used without an appropriate basis or sufficient management and oversight to limit risk. Consequently, contracting officers should consider carefully and document thoroughly the use of any high-risk contract type.

Contracting officers must choose the contract type that makes the most business sense for the Government matching work to the proper contract type. This requires an understanding of why some contracts types are riskier to the Government than others.

High-risk contracts include:

- (a) Non-competitively awarded contracts (FAR subpart 6.3, EPAAR 1506, EPAAG 6.3.1)

High risk to Government because the Government is denied the benefit of the open market to set prices;

- (b) Cost-reimbursement contracts (FAR subpart 16.3, 16.405, EPAAR 1516.3, 1516.4, EPAAG 16.3.1, 16.4.1)

High risk to Government because this type of contract provides only a limited incentive for the contractor to keep costs down; and

(c) Time-and-materials/labor hour (FAR subpart 16.6)

High risk to Government because there is no guarantee of a delivered product or service.

Firm-fixed price type contracts represent the lowest risk to the Government and are therefore the most desirable. Contracting officers must make an effort to seriously consider the use of firm-fixed price. As a reminder, FAR 16.104(e) states that if the entire contract cannot be firm-fixed-price, the contracting officer shall consider if a portion of the contract can be established on a firm-fixed-price basis.

CHAPTER 16 – TYPES OF CONTRACTS

Section 16.3 – Cost-Reimbursement Contracts

Subsection 16.3.1 - Monitoring Level-of-Effort in Cost-Reimbursement Contracts (April 2017)

16.3.1.1 Purpose.

The purpose of this subsection is to provide guidance to contracting officers (COs) for monitoring the level-of-effort (LOE) in cost-reimbursement contracts.

16.3.1.2 Background.

(a) Environmental Protection Agency Acquisition Regulation (EPAAR) clause [1552.211-73](#) entitled *Level of Effort—Cost-Reimbursement Contract (LOE clause)* states that the contractor shall provide up to a fixed number of direct labor hours for the base period and any option periods, which represents the Government's best estimate of the LOE required for each period of performance. The LOE clause provides that if the direct labor hours provided by the contractor falls below 90 percent of the specified LOE, then an equitable adjustment will be made to the fixed fee. The LOE clause also states that no adjustment will be made to the fee if the Government orders up to 110 percent of the specified LOE.

(b) In 2002 the U.S. Court of Appeals for the Federal Circuit ruled partially against the EPA in [Sociotechnical Research Applications v. EPA, 29 Fed. Appx. 578 \(Fed. Cir. 2002\)](#), stating that EPA may be liable for payment of all funds allotted to the contract without regard for whether the contractor has incurred costs up to the amount allotted. The policy prescribed in 16.3.1.4 describes actions that COs must take to mitigate this liability risk.

16.3.1.3 Authority/Applicability.

This subsection is issued in accordance with [FAR 1.301\(a\)](#) and [1.401\(f\)](#), and EPA Delegations Manual [Chapter 1-2](#).

16.3.1.4 Policy.

(a) If 90 percent of clause [1552.211-73](#) specified LOE will not be ordered during the subject period of performance, then the CO must modify the LOE and fixed fee to reduce them appropriately before the subject period of performance (base period or option period) expires.

(b) COs should attempt to negotiate a bilateral modification which reduces both the LOE and fixed fee. If a bilateral modification cannot be processed in a timely manner then the CO must issue a partial Termination for Convenience to remove any excess LOE labor hours from the current period of performance before expiration. If the LOE is not reduced before the current period of performance expires then the Government may have breached the contract and the

contractor could pursue a claim to recover the entire fixed fee amount and other damages associated with a contract breach.

(c) COs and program offices must monitor LOE contracts closely to ensure that the total number of direct labor hours ordered and completed during a contract period of performance falls within the clause range of 90 to 110 percent of specified LOE. If the monitoring indicates that at least 90 percent of the specified LOE estimate will not be achieved, then timely action must be taken by the CO to either negotiate a bilateral modification to reduce the excess LOE and corresponding fixed fee, or terminate the excess LOE hours and corresponding fixed fee for Government convenience. The following sample calculation that is also provided in clause [1552.211-73](#) illustrates how to compute a fixed fee downward adjustment: If a hypothetical base-period LOE of 100,000 hours is being reduced to 70,000, the fixed fee shall also be reduced by the same 30%. Using a corresponding hypothetical base-period fixed fee pool of \$300,000, the reduced fixed-fee amount is calculated as: $\$300,000 \times (70,000 \text{ hours} / 100,000 \text{ hours}) = \$210,000$.

(d) COs and program offices must also be sure that the contract allotment of funds is consistent with the tasking requirements. (For instance, don't obligate funds to a contract in order for the funds not to be swept as unliquidated, because that is known as "banking funds" and is prohibited.)

CHAPTER 16 – TYPES OF CONTRACTS

Section 16.4 – Incentive Contracts

Subsection 16.4.1 - Use of Cost-Plus-Award-Fee Contracts (December 2019)

This subsection was previously Section 16.1 of the Contracts Management Manual.

16.4.1.1 Purpose.

The purpose of this section is to provide guidance for the use of cost-plus-award-fee contracts (CPAF), in accordance with Federal Acquisition Regulation (FAR) Subpart 16.405-2 and Environmental Protection Agency Regulation (EPAAR) 1516.4.

16.4.1.2 Background.

The CPAF contract is a cost-reimbursement contract with a fee that rewards the contractor for performance that is better than satisfactory. The fee consists of two components, a base amount and an award amount. The base amount is negotiated and then fixed at the inception of the contract. The award amount is based on the Government's evaluation of the contractor's performance in areas such as quality, timeliness, technical ingenuity, and cost-effective management.

As with any cost reimbursement contract, the contractor is reimbursed for all allowable, allocable, and reasonable costs incurred during contract performance. Additionally, the contractor is paid the base fee amount and that portion of the award fee amount earned during each performance evaluation period. The contractor may earn all, a portion, or none of the available award fee for a particular evaluation period. Earned award fee determinations are made unilaterally by the Fee Determination Official (FDO) who is required to evaluate the contractor's performance in accordance with criteria set forth in the contract.

The basic elements of a CPAF contract are: 1) an estimated cost; 2) a base fee; 3) an available award fee, (also referred to as the award fee pool); 4) a maximum fee; 5) an earned award fee which is determined by the Government on a periodic basis; and 6) an award fee plan containing the evaluation criteria which will be used to evaluate the contractor's performance, in accordance with criteria set forth in the contract and the Award Fee Plan.

16.4.1.3 Authority/Applicability.

The procedures are set forth in FAR Subpart 16.405-2 and EPAAR 1516.4. Cost-plus-award-fee contracts may be used when the proposed acquisition is valued at \$25,000,000 or more, and a determination has been made, prior to the issuance of the solicitation, by the responsible Office of Acquisition Solutions (OAS) Division Director to use a cost-plus-award-fee contract.

16.4.1.4 Definitions.

- (a) Base Fee - The fixed amount that the contractor earns for satisfactory contract performance. The base fee (which may be 0) may not be more than three percent (3%) of the estimated cost of the contract
- (b) Award Fee Pool - The award fee pool is based upon the final negotiated estimated cost of the contract. The pool will consist of the negotiated percentage for award fee of the final negotiated estimated cost minus all non fee bearing cost elements. Bilateral agreements on award fee pool amounts appearing in sections B and H of the contract cannot be modified unilaterally by the Government.
- (c) Maximum Fee - The maximum total fee (base fee plus award fee pool) amount specified by the contract. The maximum fee must not exceed the statutory limitations prescribed in FAR 15.404-4(c)(4)(i).
- (d) Earned Award Fee - The amount of the award fee pool the Government determines the contractor has earned during an evaluation period.
- (e) Award Fee Plan - The plan is unilaterally developed and amended by the Government (subject to the timing limitations specified by EPAAR 1552.216-70 (MAY 2000)). It identifies the various performance categories and describes the associated criteria the Government will use to evaluate the contractor's performance. The plan may not change any provisions of the contract that allocate available award fee pool among two or more performance categories. All award fee plans must disclose the numerical rating the contractor must achieve for its performance to be deemed "above average" or "excellent" for award fee purposes.
- (f) Evaluation Period - The interval during contract performance which is evaluated by the Performance Evaluation Board (PEB) to determine the contractor's earned fee. The Government establishes the length of the evaluation period.
- (g) Floor Fee - The minimum amount below which an offeror may not propose an award fee.

16.4.1.5 Policy.**16.4.1.5.1 When to Use CPAF Contracts.**

Before deciding to use a CPAF contract, the CO shall consider the drawbacks, which may include expensive and time-consuming performance evaluation procedures and since 1999, contractor claims over award fee determinations are subject to the Contract Disputes Act. The CO must weigh the administrative burdens of employing the process (monitoring, documentation and personnel) against the value expected to result from its use. As a result, the CO must consider all factors including the resources and willingness of program personnel to support the contract effort.

If a CPAF contract is contemplated, the CO must:

- (a) Ensure that the limitations specified at FAR 16.301-3 are met. Of special importance is the determination that the contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort and cost associated with a CPAF contract (see FAR 16.405-2(c)(2)). This D&F must be approved by the responsible OAS Division
- (b) Document the contract file to explain the rationale for selecting a particular contract type, except for the exceptions identified in FAR 16.103(d);
- (c) Confer with the appropriate advisors (i.e., legal, financial management, and/or the Branch Chief or equivalent);
- (d) Assess the relevance of the factors identified in FAR 16.104 (i.e., price competition, price analysis, cost analysis, requirement type and complexity, urgency of requirement, and others) when selecting contract types; and
- (e) Apply adequate analytical measures (e.g., cost-benefit analysis, cost-effectiveness analysis, etc.) in the determination in 16.4.1.5.1(1) that must be approved by the responsible OAS Division Director.

16.4.1.5.2 The Fee Arrangement.

- (a) Developing the Fee Arrangement. When developing the amounts for the base fee and award fee pool, the CO should consider factors, such as: 1) the complexity of the effort; 2) degree of contractor cost risk; 3) the technical and management resources required; 4) allocation of hours between the prime contractor and any subcontractors; 5) support to Federal socioeconomic programs; and 6) past performance.

- (1) Base Fee. The fixed amount the contractor earns for satisfactory contract performance.

The base fee (which may be 0) may not be more than three percent (3%) of the estimated cost of the contract.

- (2) Award Fee. The actual award fee earned by the contractor is determined by the Government's assessment of the contractor's performance. Criteria for contract performance are included in the contract, and the contractor is then judged on how well it performs in relation to those criteria.

The amount negotiated for the award fee pool should be substantial enough to motivate the contractor to provide better than satisfactory contract performance and should also reflect the total effort required to achieve excellent performance under the contract.

If the scope of work changes, the maximum dollar amount of the available award fee pool(s) may be adjusted by means of a bilateral contract modification.

Contracting Officers shall, also, ensure that cost objectives exclude facilities capital cost of money and that the negotiated price or fee complies with FAR 15.404-4(c)(4)(i) which sets forth the statutory limitations on fees. (The cost associated with any facilities capital cost of money is not included in the estimated cost of the contract for purposes of determining the maximum fee payable. Additionally, the fee objective shall then be reduced by an amount equal to the amount of facilities capital cost of money allowed.)

The amount of the award fee pool an offeror proposes may not be lower than the floor (lower limit) established by the CO in a CPAF solicitation. The award fee floor prevents offerors from eliminating or proposing an ineffectively low award fee to make their cost proposals more competitive.

Award and base fees combined should not exceed the maximum regulatory fee limitation.

- (b) Obligating the Fee. At the time of award, the CO will obligate the total base fee amount and the total award fee pool, except for incrementally funded contracts. On incrementally funded contracts, COs shall obligate only the initial increment for base and award fee which corresponds to the incremental amount obligated for total estimated cost.

16.4.1.5.3 The Award Fee Plan.

- (a) Responsibilities. The CO has the final responsibility for preparing the award fee plan. However, significant input regarding the evaluation criteria should be obtained from the program office. The award fee plan may specify evaluation criteria, which are the same as those used to evaluate offerors proposals or may specify criteria which are different. The Source Selection Authority (SSA) has the responsibility for approving this plan.
- (b) Elements. The award fee plan contains the method for monitoring, assessing, and evaluating contractor performance, as well as, how award fees are earned. Generally, the plan includes:
 - (1) The method used to compute the award fee pool for each evaluation period;
 - (2) Performance areas to be evaluated;
 - (3) The award fee performance evaluation criteria and their weights, (if weights are to be used);
 - (4) Procedures used when conducting a performance evaluation;
 - (5) Guidelines which explain how the award fee amount is earned;
 - (6) The frequency and timing of award fee determinations (at least every six months, and not more frequently than every three or four months); and
 - (7) A statement advising the contractor that award fee will be paid only for

performance which exceeds the satisfactory level.

- (c) Approval. The plan must be approved by the SSA prior to the issuance of the solicitation. (The plan will not include amounts for award fee pools because they will be established at contract award. The award fee pool amounts will be furnished to the SSA when the source selection decision is made.) Any post-award changes to the plan must be accomplished in accordance with paragraph 16.4.1.5.3F.
- (d) Plan Criteria. All award fee plans must include at least one criterion to assess the quality of the contractor's business and contract management. This criterion should cover the effective use of personnel, compliance with contract clauses, adhering to small business/small disadvantaged business subcontracting plan goals, responsibility for overall subcontract management, and cost control and timely notification of changes in accounting systems or rates

As stated in FAR 16.405-2(b)(2), the criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimally acceptable performance in all other areas. Award fee plans should establish performance standards, which are both realistic and conducive to the attainment of excellence.

It is recommended that the number of performance areas selected for rating be between 3 and 5 because of the administrative burden required for evaluation. A smaller number may cause the evaluation to be too limited and a larger number of performance areas may cause the process to be overly cumbersome. See section 16.4.1.5.5B for general guidelines in award fee criteria.

- (e) Contractor self-evaluations. Contractors are not required to submit self-evaluations unless approved by the CO. To determine if self-evaluations are needed, the CO should obtain input from the program office on the need for contractor submission of self-evaluations. Comprehensive, effective monthly progress reports may eliminate the need for contractor self-evaluations. If self-evaluations are allowed, the CO should: 1) document the need for the self-evaluations, in writing; and 2) consider limiting self-evaluations in length and scope, so that the PEB can focus on the most critical areas where contractor input may be needed. The CO should permit contractor self-evaluations when a negative evaluation is anticipated to ensure that the PEB has all necessary information regarding performance.
- (f) Changes to the Award Fee Plan. The award fee plan is issued as part of the solicitation and should be a referenced attachment to the awarded contract. The negotiated base and award fee amounts should be incorporated in the awarded contract. After the contract is awarded, the Contracting Officer may change the award fee plan by issuing a unilateral contract modification, at least thirty calendar days before the beginning of the affected evaluation period. The Fee Determination Official (FDO) must approve the modification before issuance.

16.4.1.5.4 Roles and Responsibilities.

- (a) Fee Determination Official (FDO). The FDO is a designated official, such as a Service Center Manager (SCM), or, an Assistant Regional Administrator (ARA), who has been delegated FDO authority to carry out the responsibilities of the position.

For new procurements, the FDO is named prior to issuance of the solicitation. As such, the FDO shall review and concur with the CO decision to award a CPAF contract.

The FDO shall not serve on the PEB. Rather, the FDO is responsible for reviewing the recommendations of the PEB and making the final decision on the amount of the earned award fee.

- (b) Evaluation Coordinator (EC). The evaluation coordinator may or may not be a member of the PEB, but usually serves as the Contracting Officer Representative (COR) for the contract, unless otherwise designated by the PEB Chairperson. The EC is responsible for collecting, assimilating, and analyzing all contract performance data submitted by the Performance Monitors and the contractor, and briefs the PEB at its meetings coordinators to support the primary coordinator.
- (c) Performance Evaluation Board (PEB). The PEB is selected by the FDO to evaluate performance and recommend an appropriate fee. The board, which is headed by a Chairperson, has at least three voting members: a program office representative, a contracting activity representative, and an individual from outside of the program office organization. PEB membership may also include non-voting technical advisors.

The Chairperson of the PEB should be a senior program official appointed by the FDO. This individual conducts meetings and recommends the final award fee payment. Members of the PEB should not all be subordinate, organizationally, to the Chairperson in order to encourage independent thinking and reduce the tendency to defer to the Chairperson's opinion. The Chairperson's responsibility may be re-delegated on a case-by-case basis with the written concurrence of the FDO. However, for zone national or large contracts, alternate chairpersons, members and locations may be considered.

- (d) Performance Monitor. Any Government employee designated to observe, assess, and report the technical performance and/or business aspects of a contract. Technical performance monitors may include Work Assignment COR (for existing contracts as of December 2019 that have WAs), Delivery/Task Order COR, or contract level COR. Business performance monitors may include the CO, Contract Specialist, Financial Administrative CO, Auditor and/or the Cost Analyst.
- (e) Contracting Officer. The CO develops the award fee plan, ensures the evaluation criteria complies with the plan, reviews the PEB report, and prepares contract modifications (such as the award fee pool and the amount of earned award fee authorized on each invoice).

In addition, the CO must ensure that project personnel monitoring performance 1) understand their role and responsibilities in making the award fee process work; 2) follow the award fee plan in the contract; and 3) support the contractor's rating in the PEB report. The CO and COR should meet with the Performance Monitor (s) and all members of the PEB as soon as possible after contract award to review their responsibilities and stress the importance of timely feedback and of the need to avoid delays in the process. Areas that should be highlighted in this briefing are:

- (1) The ultimate decision on fee payment is made by the FDO, as supported by the PEB report. If the contractor's self evaluation is not received within the time period specified by the Government, the award fee process should proceed without it. The contractor has the opportunity to report progress, accomplishments, and issues in their monthly progress reports.
- (2) The PEB evaluates performance against the terms of the contract, the work assignment, and award fee plan. Evaluation against factors other than these is not allowable.
- (3) Performance Monitors are responsible for evaluating the contractor's overall performance, not the performance of individual contractor employees. The performance

monitors should assess a contractor's performance and document the results at regular performance evaluation report. The report, which measures the contractor's performance of work assignments against the award fee plan criteria, is used with invoice reviews to determine the amount of award fee earned.

- (4) The CO will address business, financial, and management issues that relate to the contractor at the PEB meeting.
- (5) A CPAF contract, when properly managed, can serve as an incentive to the contractor to achieve effective cost-control.
- (6) The award fee process should not take the place of frequent, honest communication with the contractor on performance issues. The Government shall communicate unsatisfactory performance to the contractor at anytime during the award fee period not only during the award fee evaluation process. The contractor needs technical direction and feedback from the government as the work is being performed to keep projects on track.
- (7) PEB meetings and award fee determinations should be conducted on a timely basis. Meetings should occur within 30-45 days after the end of each evaluation period. The PEB report should be completed within 45-60 days from the end of the evaluation period and should explicitly document the basis for award.

- (8) The evaluation narrative contained in the PEB report should be consistent with the scoring system discussed in section 16.4.1.5.8 and should clearly support the award fee recommendation. All supporting documentation, inclusive of meeting and telephone notes, should be submitted by the Performance Evaluation Monitor to the PEB EC.
- (f) PEB Executive Secretary (optional position). This person is appointed by the PEB Chairperson and is responsible for preparing the official PEB report. Often the Contract level COR serves as the PEB Executive Secretary.
- (g) Technical Advisors (optional position). These persons possess technical expertise and are responsible for providing technical advice. They are non-voting members of the PEB.

Note: Individuals in A-H must comply with the Office of Government Ethics Regulation at C.F.R. Part 2635 and certify that he/she is free from actual or potential personal conflicts of interest (COI). The COI Certification is located in Appendix 16.4.1A.

16.4.1.5.5 The Award Fee Evaluation Procedure.

- (a) Timely Evaluations. Timely evaluations will encourage improved or sustained excellent performance. The PEB should meet 30-45 days after the end of the evaluation period to determine the award fee for that period. The effectiveness of the award fee process hinges on timely and substantive feedback to the contractor.
- (b) General Guidelines. In evaluating the contractor's performance relative to the evaluation many of which emphasize actions that contribute to excellent performance. However, the performance areas used to evaluate contractor performance listed below are suggestions and not mandatory. This will allow each team of contract monitors who have the responsibility to evaluate contractor performance, the flexibility to establish appropriate performance areas for each contract based on type of contract, scope of work to be performed under the contract, etc. The plan should include the following performance areas to cover as a minimum, the contractor's ingenuity/innovativeness, cost efficiency, timeliness, thoroughness, and quality of deliverables.
- Ingenuity - did the contractor seek and develop original solutions to problems that resulted in savings of time, money, level of effort hours, or improvements to performance?
 - Cost efficiency - did the contractor adhere to established budgets; were projects staffed and work assignment strategies developed with an eye towards cost efficiency; did the contractor recommend and perform in ways that result in cost savings; were the costs reasonable?
 - Thoroughness - did the contractor fully complete tasks and documentation in

accordance with contract requirements; did the contractor develop well-thought-out options, analyses, or recommendations for Agency review?

- Timeliness - were the tasks completed on schedule; did the contractor succeed in meeting exceptionally tight deadlines?

In addition to evaluating the performance areas, e.g., ingenuity/innovativeness, cost efficiency, timeliness, thoroughness, and quality of deliverables, the plan may also consider:

- Responsiveness - did the contractor respond promptly and positively to technical directions?
 - Contract management - did the contractor make diligent efforts to comply with all contract clauses; make immediate disclosure of changes in accounting systems such as indirect rate changes; effectively oversee the work of subcontractors; maintain an adequate purchasing system, as evidenced by approval from a Government contract purchasing system review; make reasonable resolution of audit and financial monitoring review findings in a timely manner; make appropriate conflict of interest disclosures; submit timely work plans and reports; and achieve small business and small disadvantaged business subcontracting plan goals?
 - Perceptiveness - did the contractor recognize and notify the PO on technical issues and CO on business/contract management issues and notify them of existing or potential problems and their recommended solutions?
 - Resourcefulness - did the contractor anticipate needs and take necessary action to handle and mitigate unforeseen problems?
 - Project Management - did the contractor use management and technical staff in an were the appropriate labor classes/categories assigned to the task; was the work scheduled so that it was completed on time without disrupting the progress of other work in process?
- (c) Satisfactory/Unsatisfactory Performance. Each award fee plan must clearly state that no award fee will be earned for performance which is rated either “satisfactory or unsatisfactory.” Award fee will be earned for performance which receives a rating of “above average or excellent.”
- For example, assume the contract award fee plan has five criteria and that, in accordance with the contract, the award fee is allocated equally among the five criteria. For a given performance period, the contractor is rated as excellent on three criteria and satisfactory and unsatisfactory on the remaining two criteria. The contractor would earn no award fee for the portion of the available pool designated for the criteria on which performance was satisfactory and unsatisfactory.
- (d) Performance Reporting. Contractor performance is reported on EPA Form 1900-41B, CPAF Contract Individual Performance Event, or an alternate form, and submitted to the EC. The

EC will prepare summaries of each performance evaluation criteria and incorporate contractor self- evaluations, if available. EPA Form 1900-41A, Summary of Significant Performance Events, or an alternate form may be used to summarize evaluations. Copies of these forms are provided as appendices.

- (e) PEB Evaluation and Report. The EC presents the data on contract performance to the PEB for review and evaluation. The PEB will review the data against each performance evaluation criterion and determine the recommended award fee for each, as well as the total award fee earned by the contractor for the period. The PEB has broad discretion to recommend the award fee, notwithstanding the actual numerical score in a particular criterion. Once the award recommendation is determined, an evaluation report prepared by the PEB Executive Secretary outlining the PEB rationale is forwarded to the CO. The report must clearly document the rationale for the fee awarded; and fully convey the aspects of the contractor's performance that were downgraded and how performance can be improved in subsequent award periods. The CO shall review the evaluation report to ensure the performance areas were evaluated in accordance with the established criteria and the results support the award fee decision.

The CO will prepare a letter for signature by the FDO informing the contractor's general management of the award fee amount and provide a brief executive summary of the significant accomplishments or deficiencies and the breakdown on the amounts of earned award fee. The

CO shall include a copy of the letter and the report in the contract file. The CO will forward the Performance Evaluation Report and the letter to the FDO for signature.

- (f) Reconciliation of PEB Fee Determination. The earned award fee determination is the responsibility of the FDO. The FDO will review the performance evaluation and fee recommendation and make a final determination of the earned award fee amount. The FDO has broad discretion to determine the appropriate amount, and is not constrained by either the

numerical scores in the PEB report or by the PEB's award fee recommendations. The FDO must discuss any differences of opinion he or she has with the PEB Chairperson. If the FDO final determination differs from the PEB recommendation, the FDO must document the decision and rationale in writing. The FDO determination is provided to the Chairperson of the PEB and the CO for inclusion in the contract file, with copies to the EC. The earned award fee amounts and adjustments (i.e., subtraction of any unearned award fee amount(s)) to the available award fee pool amounts are incorporated into the contract on a Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract. The FDO determination should be completed within 60- 90 days from the end of the evaluation period.

The CO will forward the award fee letter to the contractor upon approval by the FDO. The letter must give the contractor detailed information regarding the basis of the earned award fee, clearly describing any aspects of performance that were downgraded and how the

contractor's performance can be improved in subsequent award periods.

16.4.1.5.6 Carryover of Unearned Award Fee.

Award fee is earned for each evaluation period. Any unearned award fee remaining after the evaluation of the contractor's performance during that period cannot be carried over into a subsequent evaluation period unless approved by the FDO. The FDO may allow the award fee to be carried forward to the next evaluation period only if it is based on the PEB requirement to defer a fee decision because additional information is needed for making an evaluation.

Whenever appropriate, the CO, after consulting with the program office, should take measures to de-obligate unearned award fee.

16.4.1.5.7 Importance of Timely Processing of Award Fee Modifications.

Although EPAAR 1516.301-70 authorizes payment of base fee on a provisional basis, provisional payments of earned award fee amounts may not be made. Every effort should be made to issue earned award fee determinations in accordance with the milestones prescribed in 16.4.1.5.4F, 16.4.1.5.5A and 16.4.1.5.5F. The FDO may waive or modify these time frames on a case-by-case basis when unusual or compelling circumstances exist. Program officials must ensure that the performance standards for PEB Chairpersons include a criterion for extramural resources management, and for completing award fee evaluations in a timely manner. Similarly, the FDO must promptly issue his or her final determination and award fee letters, and must ensure that the Contracting Officer promptly transmits the award fee letters and accompanying contract modifications to the contractor.

16.4.1.5.8 Award Fee Performance Spectrum.

Members of a PEB may differ widely on what is meant by the terms "unsatisfactory, satisfactory, above average and excellent" when used in describing a contractor's performance. The CO should meet with board members after contract award to discuss ratings and their significance. The PO should communicate this information to project personnel to ensure the consistent application of ratings to their work assignments.

Any one of several performance scales may be utilized to evaluate contractor performance, as long as all evaluators use the same system. One approach is to use a system in which a "+" means an excellent performance, a "0" satisfactory performance, and a "-" unsatisfactory performance. Another approach is the use of a performance scale, with ratings which vary from 1-5. Other scales may be used. The performance scale that is ultimately selected must be tailored to the specific requirements of the procurement.

The method by which scores (e.g.:+, 0, or -; 1-5) are converted to percentages must yield results which are consistent with the descriptive ratings provided in this section. The adjectival rating for each element within the scale must be described in a manner which will allow a rater to distinguish among the alternatives. Separate adjectival ratings will be provided for all criteria identified in the award fee plan. For example, if the award fee plan contains five criteria that will be evaluated on a 1-5 scale, then the requirements for excellent and above average performance under each of the five criteria must be described. A scoring system of 0-100 will be used to

determine the percentage of award fee earned. Award fee will be paid only when the contractor's performance receives an adjectival rating of above average or excellent or a numerical score of 71 or above. The score will be applied to the potential award fee pool (e.g., a score of 85 will yield an award fee equal to 85% of the potential fee). The adjectival rating, associated numerical scores, and descriptions for this scoring system follow. Each rating is descriptive of the contractor's overall performance.

EXCELLENT (86-100) - exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) weaknesses that has no adverse effect on overall performance. Contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

ABOVE AVERAGE (71-85) - effective performance; fully responsive to contract requirements; reportable weaknesses, that have little identifiable effect on overall performance.

SATISFACTORY (61-70) - meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

POOR/UNSATISFACTORY (0-60) - does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance

APPENDIX 16.4.1-A **CONFLICT OF INTEREST CERTIFICATION**

INTRODUCTION

Title 18 United States Code (U.S.C.) Section 208(a) prohibits a Government employee from acting in matters in which the individual has a financial interest. Title 5 Part 6401 supplements 5 C.F.R.

2635, the standards of ethical conduct for all EPA employees. Program officials, who perform certain specific duties, including contractual and contract-related duties, shall disclose their financial interests to prevent actual or apparent conflicts of interests.

Name

Office

Mail Code/Phone

No. Contractor(s)

Contract No.

Section 208(a) of Title 18 of the United States Code may operate to prohibit the involvement of a Government employee in particular matters in which, to his or her knowledge, the employee, his or her spouse, dependent minor child, and/or prospective employer has a financial interest. Such a determination should only be made upon consultation with a Deputy Ethics Official and with reference to 5 CFR Part 2640 and Subpart D of 5 CFR Part 2635.

I hereby certify that to the best of my knowledge and belief, I have no information concerning a violation or possible violation of 5 CFR Part 6401, i.e., I am free from actual or potential personal conflicts of interest, and am in compliance with Office of Government Ethics Regulation at 5 C.F.R. 2635.

Signature

Date

APPENDIX 16.4.1-B
CONTRACT SUMMARY OF SIGNIFICANT PERFORMANCE OBSERVATION

CPAF CONTRACT SUMMARY OF SIGNIFICANT PERFORMANCE OBSERVATION					
CONTRACT NO.		CONTRACTOR			
EVALUATION PERIOD		EVALUATION COORDINATOR			
PERFORMANCE EVALUATION CATEGORY					
OBSERVATION NUMBER	PO ASSESSMENT				SIGNIFICANT PERFORMANCE OBSERVATION CONSIDERED
	C O N T R A C T O R	M O N I T O R	C O O R D I N A T O R	P E D	

EPA 1900-41A

APPENDIX 16.4.1-C
CPAF CONTRACT INDIVIDUAL PERFORMANCE EVENT

CPAF CONTRACT INDIVIDUAL PERFORMANCE EVENT		
CONTRACT NO.	CONTRACTOR	TASK ORDER NO.
REPORTING ELEMENT		DATE(S) OF REPORTED EVENT
PERFORMANCE EVALUATION CATEGORY		
WAS CONTRACTOR NOTIFIED? “ YES “ NO BY WHOM? WHEN?		
DESCRIPTION OF PERFORMANCE EVENT		
+, 0, or B	SIGNATURE OF MONITOR	DATE
COORDINATOR:S ASSESSMENT		
+, 0, or B	SIGNATURE OF MONITOR	DATE

EPA FORM 1900-41B (Rev. 4B79)

PREVIOUS EDITION MAY BE USED

Section 16.5 – Indefinite-Delivery Contracts

Subsection 16.5.1 - Issuance of Task or Delivery Orders Under Multiple Award Contracts (January 2020)

This subsection was previously Section 16.2 of the Contracts Management Manual.

16.5.1.1 Purpose.

This section provides guidance for the issuance of task or delivery orders under multiple award indefinite quantity Advisory and Assistance Services (AAS) contracts or indefinite quantity non-AAS contracts in accordance with Federal Acquisition Regulation (FAR) 16.5 and the Federal Acquisition Streamlining Act of 1994 (FASA).

16.5.1.2 Background.

FAR section 16.5 prescribes policies and procedures for making awards of indefinite delivery contracts (including indefinite quantity contracts) and establishes either a preference scheme or requirement for making multiple awards of certain types of indefinite quantity contracts. The FAR indicates that indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under Part 16.

Multiple awards are required for indefinite quantity AAS contracts meeting certain criteria, and are preferred for other types of indefinite quantity contracts, subject to several exceptions. Orders issued under multiple award delivery or task order contracts must comply with certain procedures, which provide each awardee a fair opportunity to be considered for each order in excess of \$3,500.

FAR 16.5 contains relevant definitions, more detailed guidance, and should be consulted when multiple award contracts will be awarded. It should also be consulted concerning whether multiple award contracts should be awarded or whether the contract at issue is exempt from the requirement. The FAR also contains sample solicitation and contract clauses for use in multiple award contracts and solicitations.

16.5.1.3 Authority/Applicability.

The multiple award requirement is not applicable to an acquisition of supplies or services that includes the acquisition of AAS, if the Contracting Officer (CO) determines that the AAS are necessarily incident to, and not a significant component of the contract. The CO determination of AAS as necessarily incident to, and not a significant component of the contract, must be made on a case-by-case basis depending on the circumstances of the acquisition.

(a) Applicability of Multiple Award Requirement to AAS Contracts

For AAS contracts under the dollar and term thresholds, there is no requirement or preference in the FAR to make multiple awards; the CO may give preference to making multiple awards in his/her discretion after consultation with the Contract Level Contracting Officer Representative (COR). For these contracts, COs may use any appropriate contract type, including cost reimbursement, level of effort or completion, or indefinite quantity. If an indefinite quantity contract is used, there is still no preference or requirement for multiple awards. However, AAS indefinite quantity contracts below the thresholds may be awarded and administered in accordance with the provisions of this section in the COs discretion.

(b) Applicability of Multiple Award Requirement for Non-AAS Contracts

Non-AAS contracts may be constructed as indefinite quantity, cost reimbursement, level of effort or completion, or any other appropriate contract type. If an indefinite quantity non-AAS contract is used, COs shall, to the maximum extent practicable, give preference to making multiple awards under one solicitation, in accordance with FAR 16.504(c)(1).

In making the determination as to whether multiple awards are appropriate, COs must exercise sound business judgement as part of acquisition planning and consider certain factors including: whether there is more than one contractor capable of providing performance at the level of quality required; whether more favorable terms and conditions, including pricing, will be provided with a single award; whether the cost of administration of multiple contracts would outweigh the potential benefits from making awards; or whether multiple awards would otherwise not be in the best interests of the Government. FAR 16.504(c)(1) provides added guidance relative to the determination of whether or not to make multiple awards of non-AAS indefinite quantity contracts.

No separate written determination to make a single award is necessary when the determination is contained in a written acquisition plan. When there is no written acquisition plan, a separate determination must be made.

Non-AAS task or delivery order contracts awarded as multiple awards may follow the provisions or principles of this section.

16.5.1.4 Definitions.

- (a) Advisory and Assistance Services - The term AAS has the same meaning as set forth in FAR Subpart 37.201. It refers to the following services when provided by non-Governmental sources: services to support or improve agency policy development, decision-making, management and administration, and/or project management and administration; or R&D activities. Exclusions to the definition of AAS are shown in FAR Subpart 37.202.
- (b) Multiple Award - The process for awarding, on the basis of one solicitation, contracts for the same or similar services to two or more sources. See FAR Subpart 2.101 for the definition of multiple-award contract.

- (c) Task Order or Delivery Order Contract - A contract for services or supplies that does not procure or specify a firm quantity of services or supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks or the delivery of supplies during the period of the contract.

16.5.1.5 Policy.

16.5.1.5.1 Fair Opportunity to be Considered

Whenever multiple awards are made, the CO shall ensure that all contractors awarded such contracts are provided a fair opportunity to be considered, pursuant to the procedures set forth in the solicitation and contract, for each task or delivery order in excess of \$3,500 unless an exception applies.

When it is determined that the orders will be issued without providing contractors a fair opportunity to be considered for a particular order, the (COR) must prepare a written justification based on the factors set forth in FAR 16.505(b)(2) (setting forth the rationale for not providing contractors an opportunity to be considered) for the determination and approval of the CO.

The CO will grant approval only for those circumstances identified in FAR 16.505(b)(2). This justification must be submitted with the procurement request, statement of work (SOW), and independent government cost estimate, if required, for the requirement.

If a contractor believes that it has not been given a fair opportunity to be considered for an order and files a complaint with the cognizant OAS Division Director or designee, the contractor may be provided information from this justification. The information contained in the justification would be released except information containing confidential business information, privileged information or other sensitive information the release of which could be shown to be harmful to the Government.

16.5.1.5.2 Multiple-Award Contracts

- (a) The multiple award ordering procedures in FAR 16.505(b)(1) apply to multiple award indefinite quantity task and delivery order contracts. Each of the multiple award contracts must be a task or delivery order contract. The orders issued under such contracts may be issued on any basis deemed appropriate by the CO and may be issued on a different basis than the underlying contract. In these situations, the contract must contain clauses appropriate to both the basic contract and the orders. The orders cannot change the scope of work, period of performance, or any ceilings in the basic contract.
- (b) Each underlying multiple award indefinite quantity contract shall include a guaranteed minimum (shown as dollars or hours) for each contract period based on program requirements and contractor capacity. The maximum potential value, however, can be a contract maximum and not a period maximum.

(1) Contract Minimum:

- (i) COs should establish a realistic minimum for each contract, such as at least 5~ 10% of the overall estimated total requirement of dollars or hours.

(2) Contract Maximum:

- (i) COs should establish the potential maximum value for each contract awarded as the balance of the overall estimated total requirement (i.e., by deducting the total of the guaranteed minimums in each awardee's contract from the Government's total requirement for all of the multiple award contracts.) This method will ensure that the overall estimated requirement may be met even if any contractor(s) cannot perform or any one contractor were to be issued all of the orders under a contract (except those orders needed to meet contract minimums.)
- (ii) The contract maximum clause must indicate that the maximum represents the Government's total potential requirement for all of the multiple award contracts awarded (minus the total of the guaranteed minimums in each of the contracts), that the Government is not obligated to order the maximum from a contractor, and that the maximum of each contract will ultimately depend on the number and size of the orders received by the contractor under the contract.

16.5.1.5.3 Task or Delivery Order Statements of Work

Each requirement to be issued as a task or delivery order must contain a detailed Statement of Work (SOW), including key tasks, acceptability criteria for performance, deliverables, and schedules for performance. CORs and COs must review SOWs to ensure that no inherently governmental functions are included.

Based on the SOW, COs should identify in the request for offers whether the order will be issued unilaterally or bilaterally. Task or delivery orders may be issued on a bilateral or unilateral basis at the COs discretion and as appropriate. COs may wish to use bilateral orders when it is desirable to bind the contractor to specific delivery dates, price, or for completion efforts.

16.5.1.5.4 Independent Government Cost Estimates

Independent Government Cost Estimates are required for new or revised task and delivery orders with a potential value in excess of the FAR threshold for simplified acquisition procedures. COs may require them for orders under the simplified acquisition threshold, if deemed necessary and appropriate.

16.5.1.5.5 Possible Mechanism for Issuing Orders Under Multiple-Award Contracts

If a multiple award AAS or non-AAS indefinite quantity task or delivery order contract is awarded, each awardee of such a contract shall be provided "a fair opportunity to be considered" for each order in excess

of \$3,500, unless certain conditions as described in FAR 16.505(b)(2) are met.

In determining the procedures for providing awardees a "fair opportunity to be considered" for each order, COs shall exercise broad discretion and sound business judgement and may consider factors such as past performance, quality of deliverables, cost control, price, cost or other factors that are relevant to the order. The procedures and selection criteria that will be used for issuing orders must be set forth in the contract, as well as in the solicitation.

In determining how to issue orders, COs shall not use any method, such as allocation, that would result in unfair consideration being given to all awardees prior to placing each order. Formal evaluation plans or scoring of offers are not required. COs may use oral proposals or videotaped proposals, and streamlined procedures when selecting an awardee.

COs are encouraged not to request full, written proposals when selecting an awardee for placement of an order. The CO need not contact each of the multiple awardees before selecting an order awardee, if the CO has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

The following describes possible methods that could be used to satisfy the requirement that each awardee be afforded a fair opportunity to be considered for orders over \$3,500. COs may use other methodologies, consistent with the FAR guidance, to satisfy the "fair opportunity to be considered" standard without requiring a formal deviation to this Section, as long as the contract file is clearly documented to demonstrate how the CO provided each awardee a fair opportunity to be considered for each order over \$3,500.

(a) Streamlined Proposal Method Guidelines

(1) Request for Offers

(i) The cover memorandum to the SOW for each task or delivery order to be issued will identify the mechanism for requesting offers. COs, in coordination with POs, will determine the appropriate method commensurate with the estimated cost/price of the work, and complexity of the task.

- COs may telephone contractors to identify resource availability for simple, well-defined tasks which only require the contractor to meet a stated schedule.
- COs may telephone contractors to identify resource availability and price/cost for well-defined tasks.
- COs may telephone or issue written requests for oral or videotaped technical offers for tasks where a technical approach is needed. COs may request cost/price information as well.

- COs may telephone or issue written requests for submission of written offers for complex tasks, where a technical approach, as well as resource availability and price/cost or other factors, need to be considered. The request may limit the number of pages for the offer. The limit should be based on the complexity of the task or delivery order. Appendix 16.5.1-A provides a sample request for offer letter.

b) The request for offers will include the SOW, and identify the technical and/or cost/price or other evaluation criteria which will be used to evaluate the offers, if required; the components of the offer (technical and/or price/cost or other factors) to be submitted; the format for submission; the time frame for submission of the offer; the basis for order selection; and any other relevant instructions to the contractor, including those regarding discussions.

16.5.1.5.6 Offer Participation in the Process for Order Issuance

Upon issuance of the request for offers to all awardees of multiple award contracts, all contractors shall submit to the CO an offer within the time specified in the request. For more complex tasks, the offer may include technical and cost components. However, some may only require cost submissions. Written offers should be submitted in a standardized format.

All multiple awardees will be given a fair opportunity to be considered for each order over \$2,500 (unless an exception applies) and will be required to be available to perform each order over \$2,500. Each multiple awardee must participate in the order selection process for each order, and be available to perform if selected.

The only acceptable reasons for a contractor's nonparticipation in the order issuance process would be due to an inability to accept or perform the work because of a conflict of interest, capacity problem, or some other compelling factor which the CO determines would affect the contractor's ability to perform the work and justifies its nonparticipation in the order issuance process. The CO should document in writing the reasons justifying the contractor's nonparticipation in the order issuance process for a specific order.

(a) The technical component of an offer should include for each major subtask, as appropriate, for the prime and any subcontractor(s):

- (1) Technical approach to perform the order, if required;
- (2) Staffing plan;
- (3) Delivery Schedule;
- (4) Resumes of key personnel, if identified;

(5) References; and/or

(6) Any other requested information.

- (b) The price/cost component should include a breakdown of price/costs for each major subtask and an overall summary for the full task for the prime and any subcontractor(s).

Each contractor shall be reimbursed for their offer preparation costs in accordance with its established cost accounting practices. COs should require each offeror to disclose its accounting practice for these costs in its initial proposal responding to the solicitation for multiple awards and evaluate this as part of the cost evaluation for the basic contract award. COs should include a provision in their solicitation setting forth these requirements and include a clause or advance agreement in each contract that sets forth the contractor's accounting practice for these costs.

16.5.1.5.7 The Evaluation Procedure

- (a) When technical evaluations are used by the CO for order issuance purposes, the technical evaluation of an offer should be documented using a streamlined, simplified standard format allowing space for strengths, weaknesses/deficiencies, rating, and score, if appropriate. The evaluation may be handwritten. Appendix 16.5.1-B provide two examples of a completed technical evaluation form; this may be used for documenting technical evaluation of offers.
- (b) The COR, in conjunction with the CO, will recommend the number of participants in the technical review based on the complexity and/or size of the task or delivery order SOW. The technical evaluation may be:

- (1) Completed by the COR only, with input if necessary from the CO;
- (2) Completed by the Task/Delivery Order Contracting Officer Representative (TOCOR/DOCOR) and approved by the COR and CO;
- (3) Completed by a technical panel, including the TOCOR or DOCOR as members, and approved by the COR and CO.

- (c) Technical and cost/price or other evaluation criteria will be identified in the request for offer, if appropriate.

(1) Technical evaluation criteria may include the following core elements:

- (a) Technical approach and technical understanding of the SOW;
- (b) Proposed staffing, type and mix of labor, level of expertise, education, training, appropriate experience;

- (c) Subtask management (plans for managing tasks, staffing, quality assurance/quality control);
 - (d) Delivery schedule (proposed milestones for completing the task).
- (2) Cost/price evaluation criteria evaluated by technical and contracting personnel and may include:
- (a) Mix, level of effort, and reasonableness of rates/costs;
 - (b) Types and quantities of materials, other direct costs;
 - (c) Number of travelers, destination, duration, and location of travel;
 - (d) Escalation factors;
 - (e) Indirect cost rates; and
 - (f) Fee.
- (3) A conflict of interest statement may be included stating that for conflict of interest reasons, all or some contractors may not be eligible to be considered for issuance of an order.
- (4) Evaluation criteria may include the following elements:
- (a) Technical innovation;
 - (b) Available resources (non-direct labor resources, i.e., facilities, methodologies, experience/expertise in use of these resources);
 - (c) Accelerated time of delivery;
 - (d) Past performance under the subject contract-COs are strongly encouraged to use this as an evaluation factor:
 - Quality of deliverables;
 - Cost control; and
 - Validity of cost estimates.
- (5) The CO may use any other criteria that are appropriate for issuance of an order which result in each awardee being provided a fair opportunity to be considered for each order.

16.5.1.5.8 Basis for Selection of Awardee to Perform Order

- (a) The method of selection for issuance of a task or delivery order will be tailored to the specific requirements of the delivery or task order, so long as each offeror is provided a fair opportunity to be considered for each order. The underlying solicitation and contract will disclose the procedures and range of selection methods (if more than one may be used for order issuance purposes) that will or could be used to provide multiple awardees a fair opportunity to be considered for each order.

The selection method may vary from order to order, and may differ from the selection method that resulted in award of the underlying contract. The specific selection method for each order will be set forth in the request for offers (based on the range of selection methods identified in the solicitation and the contract), and will be within the discretion of the CO with recommendation from the COR. Possible order selection methods include:

- (1) Issuance of the order to the contractor with the highest composite score. In this case, the technical and cost components are both scored. The request for offers identifies the formula used to arrive at the composite score, e.g. the technical component is worth 70%, the cost component 20%, and past performance 10%. A sample of this approach is included as Appendix 16.5.1 C, “Award Based on Composite Score.”
- (2) Issuance of the order to the contractor offering the greatest value to the Government (technical quality more important than cost/price). In this situation, the order issuance is based primarily on technical quality, with cost as a secondary consideration. This method requires documenting any trade-off decisions in making selection, such as the rationale for paying more for higher technical quality.
- (3) Issuance of the order to the contractor with the lowest evaluated cost, technically acceptable offer. Generally, the technical component of these offers are scored as acceptable or unacceptable rather than given point scores, and order issuance is made to the technically acceptable offer with the lowest evaluated cost/price.

COs may utilize other selection methods so long as they are identified in the solicitation and contract and result in each awardee being given a fair opportunity to be considered for each order.

- (b) The method for scoring must yield results which are consistent with the basis for selection. If point scores are used, the points assigned must be consistent with the descriptive ratings provided in this section. If adjectival ratings are used, the definition must be consistent with the descriptions provided in this section.
- (1) When offers are point or adjectivally scored, individual evaluation criteria may be scored using a scale of poor, satisfactory, superior or 1, 2, 3 as follows (other scales may be used as long as consistency is provided):

- (i) Poor = 1 = fails to adequately address critical requirements of the SOW and technical evaluation criteria; may satisfy some requirements, but not others; reflects major weaknesses or deficiencies. Could not meet requirements without fundamental changes involving a total re-write or redirection of the offer.
 - (ii) Satisfactory = 2 = addresses and meets most requirements of the SOW and technical evaluation criteria, with some correctable and minor weaknesses and/or deficiencies noted. Is generally considered to demonstrate at least minimum requisite experience, qualifications and performance capabilities. Some discussions may be required to address and correct weaknesses or deficiencies.
 - (iii) Superior = 3 = clearly addresses and exceeds requirements of the SOW and technical evaluation criteria with no weaknesses or deficiencies, or very minor, correctable weaknesses or deficiencies noted.
- (2) If offers are not point or adjectivally scored, evaluation criteria should be rated as acceptable or unacceptable in meeting the requirements of the SOW. If this rating approach is used, COs should identify in the request for offers what constitutes an "acceptable" and what constitutes an "unacceptable" rating.

16.5.1.5.9 Discussions

Issuance of an order may be made based on evaluation of offers without discussions, or on evaluation of offers and discussions. The request for offers will set forth whether or not discussions will be held, or if awards will be based on evaluation with no discussions, or whether the CO reserves the right to have discussions if deemed necessary. The solicitation and the contract will also contain instructions on discussions.

If discussions are held, the CO and, if necessary, the COR or another technical representative, will hold discussions with the contractors after evaluation of offers. Generally, a technical representative should be present when it is necessary to discuss technical issues. A technical representative's presence is optional if discussions concern cost aspects only.

If the CO determines that the presence of a technical representative is not necessary and the COR disagrees, the COR may appeal this decision to one level above the CO for resolution.

The purpose of the discussions will be to ensure understanding of the offer, to discuss weaknesses and/or deficiencies in the offer, and to discuss the Government's position. If discussions are held with one multiple awardee, they generally should be held with all awardees to ensure that all awardees have been provided a fair opportunity to be considered for the order.

16.5.1.5.10 Documentation

COs should document the contract file for each order issued under a multiple award contract the manner in which each contractor was provided a fair opportunity to be considered for issuance of the order, and the rationale for selection

16.5.1.5.11 Offer Approval

Acceptance of the offer may be done as a separate action or by incorporation of the offer into the task or delivery order.

Task or delivery orders may be issued on a bilateral or unilateral basis at the COs discretion and as appropriate. COs may wish to use bilateral orders when it is desirable to bind the contractors to specific delivery dates, price, or for completion efforts.

16.5.1.5.12 Differences Between “Fair Opportunity to be Considered” Standard for Issuance of Orders Under Multiple Award Contracts and Pre-Award Contract Competitions

- (a) There is no requirement for meaningful discussions as part of the multiple award order issuance process.
- (b) There is no requirement for preparation of a "competitive range determination" after evaluation of offers as part of the multiple award order issuance process.
- (c) There is no requirement to request revised offers or Best and Final Offers for the issuance of orders under multiple award contracts.
- (d) There is no required Office of General Counsel or quality assurance review for actions relating to the issuance of orders under multiple award contracts. This review should be requested by the CO if legal issues are involved, or on a case-by-case basis as determined necessary.
- (e) Any decisions made in connection with the issuance or proposed issuance of an order under a multiple award task or delivery order contract are not subject to protest to the Agency, General Accounting Office or the General Services Board of Contract Appeals under FAR subpart 33.1 except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract.

In addition, the CO may consider including a clause in the solicitation and contract that indicates that any decisions made in connection with the issuance or proposed issuance of a task or delivery order are not subject to the Disputes clause of the contract, although COs should recognize that such a clause may be deemed unenforceable if contested by the offeror/contractor.

If a contractor believes that it has not been given a fair opportunity to be considered for an order, it may file a complaint with the Task/Delivery Order Ombudsman, who is the cognizant OAS Division Director or designee.

16.5.1.5.13 Multi-Agency Contracts (MACs) and Governmentwide Acquisition Contracts (GWACs)

- (a) If the multiple-award contract is a MAC or GWAC, in addition to following the procedures in EPAAG 16.5.1, also follow the procedures for issuing orders against these types of contracts in EPAAG 17.5.1.

APPENDIX 16.5.1-A
SAMPLE REQUEST FOR OFFER LETTER

XYZ Corporation
1234 Main Street
Anywhere, USA 56789

Dear Sir or Madam:

You are hereby requested to submit an offer using the prescribed format in Contract No. 68-W5-XXXX to provide services to be furnished under this contract in accordance with the attached statement of work. You should develop a technical offer, including technical approach, estimated resources, staffing, deliverables, schedule; and develop a cost estimate.

(A) Technical approach - The technical offer should describe your understanding of the statement of work and method of execution of the work. Do not paraphrase or repeat the statement of work. It should include identification of any anticipated problems, if any, in completing tasks; and a management plan identifying individual subtasks, schedule milestones, and effort projections by labor category.

(B) Schedule - The technical offer should include a timetable for deliverables.

C) Estimated resources and staffing - The offer should include:

(1) Identification of anticipated subcontractor and consultant use;

(2) Identification of personnel to be assigned, including a staffing plan and accompanying resumes with a description of their relevant background experience and qualifications, and assigned duties within the project. By submission of your offer you certify that all proposed personnel meet any minimum experience and educational requirements stated in the statement of work for the position for which they are proposed.

(D) Cost estimate - the technical offer should be accompanied by a breakdown of the estimated

Direct Labor costs and hours to be utilized by labor category, the other direct costs, travel and indirect costs broken out by subtask and by total task.

Your offer will be scored in accordance with the attached evaluation criteria. The task order will be awarded to the contractor with the highest composite score. You are advised that award may be made without discussions.

An original and one copy of your offer are due to me on [insert date]. If mailed, please submit your offer to: John Doe, Contracting Officer, 1200 Pennsylvania Avenue, NW, (380XR), Washington,

D.C. 20460. If hand carried, please deliver your offer to: John Doe, Contracting Officer, 1300 Pennsylvania Avenue, NW, (Ronald Reagan Building), Washington, D.C. 20004.

Sincerely,

John Doe
Contracting Officer

APPENDIX 16.5.1-B
TECHNICAL EVALUATION FORM

Contractor: Company ABC **Date Evaluation Performed:** 1/17/95

Evaluator: Jack Smith **Request for Offers Number:** 8

Subfactor	Strengths and/or Weaknesses	Rating	Weight	Score
Technical Approach		2	25	17
Schedule		3	15	15
Resources and Staffing		2	30	20
Total Technical Score				52

Cost Realism and Reasonableness		2	20	13
Past Performance		3	10	10

Contractor: Company XYZ **Date Evaluation Performed:** 1/17/95

Evaluator: Jack Smith **Request for Offers Number:** 8

Subfactor	Strengths and/or Weaknesses	Rating	Weight	Score
Technical Approach		3	25	25
Schedule		2	15	10
Resources and Staffing		3	30	30

Total Technical Score				65
Cost Realism and Reasonableness		3	20	20
Past Performance		2	10	7

APPENDIX 16.5.1-C

AWARD BASED ON COMPOSITE SCORE

ABC Corporation

Technical score 52
Cost score 13
Past Performance score 10

TOTAL SCORE FOR OFFER 75

XYZ Corporation

Technical score 65
Cost score 20
Past Performance score 7

TOTAL SCORE FOR OFFER 92

Task order issued to XYZ Corporation.

Section 16.7 – Agreements

Subsection 16.7.100 - No-Cost Contracts for Conference Support Services (January 2008)

16.7.101 Purpose.

This section sets forth policy for the issuance of no-cost contracts for conference support services.

16.7.102 Background.

The policy provided in this section was originally provided as an OAM Flash Notice on January 29, 2008. Comptroller General (CG) opinion [GAO-B-308968](#) dated November 27, 2007, advised that "no-cost" conference support contracts do not violate the Anti-deficiency Act's voluntary services prohibition, or improperly augment agency appropriations.

16.7.103 Authority/Applicability.

This section is issued in accordance with FAR 1.401(f), 1.301(a), and EPA Delegations Manual Chapter 1-2.

16.7.104 Definition.

No-Cost Contract - A no-cost contract for conference support is a contract in which a vendor agrees to plan, manage and provide logistical and other services for a federally sponsored conference without charge to the Government, in exchange for the right to charge fees to exhibitors and attendees at the conference. The Government makes no monetary payment to the contractor for the contractor's performance, the Government has no financial liability to the contractor, and the contractor has no expectation of payment from the Government.

16.7.105 Policy.

A no-cost contract for conference support is permissible provided the following requirements are satisfied:

(a) The contract must explicitly state that the contractor will provide the enumerated services to EPA on a "no-cost" basis.

(b) The contract must be competed on a "no-cost" basis. Note that under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 *et seq.* (1988), the bid protest jurisdiction of the Government Accountability Office (GAO) encompasses protests of solicitations issued by federal agencies leading to contracts for the procurement of property or services and does not turn on whether appropriated funds are involved. *Computer Support Sys. Inc.*, 69 Comp. Gen. 644 (1990), 90-2 CPD ¶ 94. *See also, Century 21--- AAIM Realty, Inc.*, B-246760, 92-1 CPD ¶

345. Accordingly, no-cost contracts should not be viewed as an opportunity to avoid the requisite competition requirements of federal procurements.

(c) The terms of the contract must expressly preclude the contractor from obtaining payment from EPA even if the fees are inadequate to cover the contractor's costs and expected profit. Depending on the terms of the contract, however, the contractor may charge fees to EPA conference attendees and exhibitors.

(d) The following language may be used to protect the Agency's interests in a no-cost contract:

In consideration of the right to [insert task that contractor will be performing at the event(s) covered by the scope of work for the contract] and retain fees charged to attendees and exhibitors at this (these) event(s) under Contract No. XXX, the undersigned Contractor hereby expressly agrees to provide the subject services to the United States Environmental Protection Agency without charge or "gratuitously." (If the contractor will charge fees for other services such as copies of proceedings or mailing lists, then those fees should be specified as well.)

It is understood and agreed that the Contractor will provide the aforementioned [describe services to be performed] free of charge to the United States Environmental Protection Agency and that no future compensation or claim related to said services will be due or expected.

It is also understood and agreed that this Agreement in no way amends or modifies the terms and conditions of Contract No. XXX.

This Agreement does not violate the prohibition against "voluntary services" contained in 31 U.S.C. § 1342 in that services furnished pursuant to a formal agreement are not considered voluntary services. 7 Comp. Gen. 810 (1928); [B-308968](#) November 27, 2007.

The undersigned warrants that he or she possess the requisite signatory authority to bind [insert name of Contractor] to this Agreement.

(e) The Contracting Officer must remain sensitive to possible conflicts of interest throughout the procurement. The agenda for the conference, including selection of speakers and other matters concerning content, and the manner in which the conference is carried out must serve EPA's purposes and not the contractor's. For example, the contractor may not use the conference as a forum to market its services to federal agencies or the non-federal community, except as an exhibitor along with other commercial vendors.

(f) The contractor may use the proceeds from the fees charged to defray the cost of the conference facility, support services, expert presentations, working meals, and light refreshments (including meals and light refreshments for non-federal attendees) and similar expenses. Contractors may also receive a reasonable profit from the fees. Contracting officers should negotiate, and monitor, the fees contractors will charge to ensure that the contractor charges fees only in amounts necessary to cover its costs and a reasonable profit.

(g) The terms of the contract must require that the contractor charge a separate fee for receptions and similar entertainment-oriented events that take place after normal duty hours.

(h) A no-cost contract cannot be used when the product or service being procured is statutorily required. When Congress requires an agency to take a certain action, presumably it also appropriates funds to carry out that action.

CHAPTER 17 – SPECIAL CONTRACTING METHODS

Section 17.5 – Interagency Acquisitions

Subsection 17.5.1 –Interagency Acquisitions Procedures (January 2020)

17.5.1.1 Purpose.

The purpose of this subsection is to provide guidance on processing interagency acquisitions issued under the Federal Acquisition Regulation (FAR).

17.5.1.2 Background.

This subsection has been updated to comply with FAR 17.5, *Interagency Acquisitions*, which was significantly amended under FAR Case 2018-015, *Governmentwide and Other Interagency Contracts*.

17.5.1.3 Applicability/Authority.

(a) Applicability

This subsection applies to interagency acquisitions when-

- An agency needing supplies or services obtains them using another agency's contract, e.g. "direct acquisition"; or
- An agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order, e.g. "assisted acquisition".

This subsection does not apply to-

- Interagency reimbursable work performed by Federal employees (other than acquisition assistance);
- Interagency activities where contracting is incidental to the purpose of the transaction ("incidental" for the purposes of this guidance means services or supplies that are not essential to the primary purpose of the interagency transaction);
- Interagency activities that the Office of Grants and Debarment (OGD) or the Office of General Counsel (OGC) determine are issued under statutory authorities where the interagency activity does not acquire supplies or services from contractors. Statutory authorities are discussed in Chapter 3 of the Office of Grants and Debarment's *Interagency Agreement Manual*.

(b) Authority

This subsection is issued under the authorities of FAR 1.301(a), and EPA Delegations Manual Chapter 1-2, and based on various provisions of the FAR that govern interagency acquisitions including FAR 17.5, *Interagency Acquisitions*, 8.4, *Federal Supply Schedules*, and 35.017, *Federally Funded Research and Development Centers*, and the Office of Federal Procurement Policy's memorandum, *Improving the Management and Use of Interagency Acquisitions*.

17.5.1.4 Definitions.

Definitions of “interagency acquisition”, “assisted acquisition”, and “direct acquisition” are located in FAR 2.101, *Definitions*. The description of “interagency agreement” is located in FAR 17.502-1(a). The following abbreviated definitions are provided for convenience.

Interagency acquisition - means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency), by an assisted acquisition or a direct acquisition.

Direct acquisition - means a type of interagency acquisition where a requesting agency places an order directly against a servicing agency's indefinite-delivery contract such as the General Services Administration's Federal Supply Schedules (GSA FSS), Government-Wide Acquisition Contracts (GWACs), and Multi-Agency Contracts (MACs). The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order.

Assisted acquisition - means a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency's behalf, such as awarding and administering a contract, task order, or delivery order as documented in an interagency agreement.

Interagency agreement – means an agreement signed between the servicing agency and the requesting agency under an assisted acquisition that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s).

17.5.1.5 Policy.

This subsection provides guidance on the process to execute the following types of interagency acquisitions:

17.5.1.6 Direct Acquisitions

17.5.1.7 Assisted Acquisitions

17.5.1.8 Class Justifications

17.5.1.9 Federally Funded Research and Development Centers

17.5.1.6 Direct Acquisitions.

Direct acquisitions are a type of interagency acquisition where a requesting agency places an order directly against a servicing agency's indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order (FAR 2.101).

The most commonly used indefinite-delivery contracts are the General Services Administration's Federal Supply Schedules (GSA FSS), Government-Wide Acquisition Contracts (GWACs), and Multi-Agency Contracts (MACs).

(a) Responsibilities

(1) Program Offices

- (i) Must exercise sound business discretion when considering direct acquisitions to fulfill the agency's mission needs. Direct acquisitions must not be used to circumvent competition, EPA-specific policies and procedures, or existing EPA acquisition vehicles.
- (ii) Ensure that proposed direct acquisition requirements valued over the simplified acquisition threshold are included in EPA's acquisition planning and forecasting process in accordance with EPAAG 7.1.1.
- (iii) Ensure all required documentation listed under paragraph (c) is provided to the contracting officer.

(2) Contracting Officers

- (i) Serve as business advisors supporting program offices in acquisition planning, market research, and analysis leading to EPA's decision to use another agency's contract.
- (ii) Ensure all required documentation listed under paragraph (c) is provided by the program office.
- (iii) Ensure any EPA unique terms, conditions, provisions, or clauses are included in the direct acquisition if they do not conflict with the servicing agency's contract and the contract allows agencies to add non-conflicting terms and clauses. FAR 8.404(b) states that when placing an order, contracting officers are responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed.
- (iv) Review and provide concurrence or non-concurrence on Direct Acquisition Justifications within seven business days of receipt. Justifications that receive a non-concurrence will be returned to the program office with an explanation.

- (v) Review and approve or not approve Economy Act Determination and Findings within seven business days of receipt. Determinations that are not approved will be returned to the program office with an explanation.

(b) Statutory Authorities

All direct acquisitions issued under the FAR must be based on a statutory authority. Statutory authorities are discussed in Chapter 3 of the Office of Grants and Debarment's [*Interagency Agreement Manual*](#).

(1) Statutory Authorities Other Than the Economy Act

The statutory authority for orders issued against GSA FSS is 40 U.S.C. 501 which authorizes GSA to purchase supplies and services on behalf of the Government.

The statutory authority for orders issued against GWACs is 40 U.S.C. 11302(e) which authorizes executive agencies to be designated as executive agents for Government-wide acquisitions of information technology.

There is no general statutory authority for orders issued against MACs, however, individual MACs may be based on a statutory authority. The servicing agency should be contacted to verify if their MAC is based on a specific statutory authority.

The statutory authority must be documented in the Direct Acquisition Justification.

(2) The Economy Act Authority

If a specific statutory authority does not exist, *the Economy Act*, 31 U.S.C. 1535, may be used as the statutory authority for an order if all requirements are met, documented and approved per FAR 17.502-2 and this subsection in an Economy Act Determination and Findings (D&F).

Program offices are responsible for drafting the Determination and Findings. Contracting officers are available to provide support. See Appendix 17.5.1-A for an Economy Act D&F template.

Contracting officers are responsible for approving the Determination and Findings per FAR 17.502-2(c)(2) and EPAAG 1.6.1-A. Determinations that are not approved will be returned to the program office with an explanation.

(c) Documentation

In addition to the applicable documents required under EPAAG 7.1.1.5.6, *Procurement Package*, the Federal Acquisition Regulation, and EPA policies and regulations, the following documentation shall also be provided by the program office to the contracting officer via a procurement request in EAS:

- Provide any unique terms, conditions, and applicable EPA-specific provisions, clauses, statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract, as long as they do not conflict with the servicing agency's contract and the contract allows agencies to add non-conflicting terms and clauses.
- Provide an approval e-mail per EPAAG 39.1, *IT Acquisition Approval Procedures*, or indicate why approval was not required when purchasing information technology. Direct acquisitions for information technology (IT) (including all acquisitions that are not primarily for IT, but for which IT products or services are included as a secondary or ancillary part of the requirement), must follow the approval procedures in EPAAG 39.1, *IT Acquisition Approval Procedures*.
- Business decision to use another agency's vehicle documented in *either* an Economy Act Determination and Findings or in a Justification for interagency acquisitions not authorized by the Economy Act statute.
 - If using the Economy Act as a statutory authority, a signed copy of the Determination and Findings must accompany the procurement request for the contracting officer's approval.

Contracting officers are responsible for approving the Determination and Findings per FAR 17.502-2(c)(2) and EPAAG 1.6.1-A. Determinations that are not approved will be returned to the program office with an explanation.

- If the action is based on a statutory authority other than the Economy Act, then per FAR 4.801(b) the business decision shall be documented as follows:

Direct Acquisition Justification

- Indicate the statutory authority.
- Document the business decision/rationale for using another agency's vehicle, including that no EPA common contract solution such as the category management vehicles or Remedial Acquisition Framework (RAF) vehicles (see EPAAG 8.0.100) are applicable, or if an EPA contract is applicable then explain the decision not to use the existing EPA vehicle.

Contracting officers must review the Direct Acquisition Justification and indicate concurrence or non-concurrence. After concurrence the procurement can move forward for processing. Justifications that receive a non-concurrence will be returned to the program office with an explanation.

17.5.1.7 Assisted Acquisitions.

Assisted acquisitions are a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency's behalf, such as awarding and administering a contract, task order, or delivery order (FAR 2.101) as documented in interagency agreements.

(a) Responsibilities

(1) Program Offices

- (i) Must exercise sound business discretion when considering assisted acquisitions to fulfill the agency's mission needs. Assisted acquisitions must not be used to circumvent competition, EPA-specific policies and procedures, or existing EPA acquisition vehicles.
- (ii) Ensure that proposed assisted acquisition requirements valued over the simplified acquisition threshold are included in EPA's acquisition planning and forecasting process in accordance with EPAAG 7.1.1.
- (iii) Ensure all required documentation listed under paragraph (c) is provided to the contracting officer.
- (iv) Ensure either an approved Economy Act Determination and Findings or Assisted Acquisition Justification is forwarded to the Office of Grants and Debarment's Interagency Agreement Shared Service Center (IASSC).

(2) Contracting Officers

- (i) Serve as business advisors supporting program offices in acquisition planning, market research, and analysis leading to EPA's decision to use another agency's contracting services and contract.
- (ii) Ensure all required documentation listed under paragraph (c) is provided by the program office.
- (iii) Ensure any EPA unique terms, conditions, provisions, or clauses are included in the assisted acquisition if they do not conflict with the servicing agency's contract and the contract allows agencies to add non-conflicting terms and clauses.
- (iv) Review and provide concurrence or non-concurrence on Assisted Acquisition Justifications within seven business days of receipt. Justifications that receive a non-concurrence will be returned to the program office with an explanation.

- (v) Review and approve or not approve Economy Act Determination and Findings within seven business days of receipt. Determinations that are not approved will be returned to the program office with an explanation.
- (vi) After review, return all documentation to the program office to be forwarded with their assisted acquisition request to the IASSC for processing.

(3) The IASSC

- (i) Supports program offices with the processing, managing, monitoring, and administration of interagency acquisitions and any subsequent modification or supplement to the interagency acquisition.
- (ii) Processes assisted acquisition actions only after receiving either an approved Economy Act Determination and Findings or an Assisted Acquisition Justification.

(b) Statutory Authorities

All assisted acquisitions issued under the FAR must be based on a statutory authority.

(1) Statutory Authorities Other Than the Economy Act

Chapter 3 of the Office of Grants and Debarment's *Interagency Agreement Manual*, provides a discussion of the different types of non-Economy Act statutory authorities available to be used for interagency acquisitions.

The statutory authority must be documented in the Assisted Acquisition Justification.

(2) The Economy Act Authority

If a specific statutory authority does not exist, *the Economy Act*, 31 U.S.C. 1535, may be used as the statutory authority for an order if all requirements are met, documented and approved per FAR 17.502-2 and this subsection in an Economy Act Determination and Findings (D&F).

Program offices are responsible for drafting the Determination and Findings. Contracting officers are available to provide support. See Appendix 17.5.1-A for an Economy Act D&F template.

Contracting officers are responsible for approving the Determination and Findings per FAR 17.502-2(c)(2) and EPAAG 1.6.1-A. Determinations that are not approved will be returned to the program office with an explanation.

(c) Documentation

(1) Documentation for Contracting Officer Review

The following documentation shall be provided by the program office to the contracting officer:

- The performance work statement or statement of work.
- Any unique terms, conditions, and applicable EPA-specific provisions, clauses, statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract, as long as they do not conflict with the servicing agency's contract and the contract allows agencies to add non-conflicting terms and clauses.
- An approval e-mail per EPAAG 39.1, *IT Acquisition Approval Procedures*, or indicate why approval was not required for purchasing information technology. Assisted acquisitions for information technology (IT) (including all acquisitions that are not primarily for IT, but for which IT products or services are included as a secondary or ancillary part of the requirement), must follow the approval procedures in EPAAG 39.1, *IT Acquisition Approval Procedures*.
- Business decision to use another agency's vehicle documented in *either* an Economy Act Determination and Findings or in a Justification for interagency acquisitions not authorized by the Economy Act statute.
 - If using the Economy Act as a statutory authority, a signed copy of the Determination and Findings must be forwarded to the contracting officer for approval.

Contracting officers are responsible for reviewing the Determination and Findings per FAR 17.502-2(c)(2) and EPAAG 1.6.1-A. After approval, contracting officers will forward the Determination and Findings to the program office for processing by IASSC. Determinations that are not approved will be returned to the program office with an explanation.

- If the action is based on a statutory authority other than the Economy Act, then per FAR 4.801(b) the business decision shall be documented as follows:

Assisted Acquisition Justification

- Indicate the statutory authority.
- Document the business decision/rationale for using another agency's vehicle, including that no EPA common contract solution such as the category management vehicles or Remedial Acquisition Framework (RAF) vehicles (see EPAAG 8.0.100) are applicable, or if an EPA

contract is applicable then explain the decision not to use the existing EPA vehicle.

Contracting officers must review the Assisted Acquisition Justification and indicate concurrence or non-concurrence. After concurrence the Justification will be returned to the program office for processing by IASSC. Justifications that receive a non-concurrence will be returned to the program office with an explanation.

(2) Interagency Agreements

An Interagency Agreement (IA) is required for all assisted acquisitions issued under the FAR. The IASSC policies and procedures governing interagency agreements are accessible at the IASSC [website](#). Additional information is available at FAR 17.502-1(a)(1)(i), and in the OFPP guidance entitled, *Improving the Management and Use of Interagency Acquisitions*.

(3) Modifications/Project Period Extensions

Any modification to assisted acquisitions or their interagency agreements must be coordinated and processed through IASSC. If IASSC determines that the modification is outside the scope of the original interagency agreement, then the modification will be treated as a new assisted acquisition.

Any proposed modification that extends an existing Economy Act interagency agreement's project period beyond three months will be considered outside the original scope of the interagency agreement and will require a new Economy Act Determination and Findings (D&F). The Economy Act D&F will need to be reviewed and approved by the contracting office in accordance with the processing instructions within this subsection.

Multiple extensions of the project period which together total three months or more are also considered outside the scope of the existing interagency agreement, and will require a new Economy Act D&F.

A new Economy Act D&F will not be necessary if an interagency agreement modification only incrementally adds funds during an existing interagency agreement's project period or during an interagency agreement's extension of a project period, and the amount of funds added will not cause the project or extension period's budgeted amount to be exceeded.

Should there be any questions concerning the need for a D&F, please contact the assigned IASSC Interagency Agreement Specialist for assistance.

17.5.1.8 Class Justifications.

(a) Request and Approval

In limited situations, the Head of the Contracting Activity (HCA) may determine that a class of non-Economy Act interagency acquisitions is justified based on the same business decision/rationale for the same or related supplies or services.

Program offices are responsible for drafting the Class Justification to include:

- The statutory authority;
- The specified period, with the expiration date. Class justifications cannot exceed two years;
- The specific class of interagency acquisition;
- The business decision/rationale for using another agency's vehicle, including the decision not to use an existing EPA vehicle such as the category management vehicles or Remedial Acquisition Framework (RAF) vehicles (see EPAAG 8.0.100), if applicable; and
- The rationale for the class justification.

The Class Justification must be approved by the program office's SRO, reviewed and concurred by the applicable OAS Division Director or RAM, and then approved by the HCA. Class Justifications that are not approved will be returned to the program office with an explanation.

(b) Issuing Individual Interagency Acquisitions within the Class Justification

Individual non-Economy Act interagency acquisitions within the Class Justification do not require a separate Direct or Assisted Acquisition Justification, provided that the assigned contract-level COR obtains the cognizant contracting office concurrence that the specific interagency acquisition falls within the scope of the class justification.

To obtain the contracting office concurrence that the proposed interagency acquisition falls within an HCA approved Class Justification, the following documentation shall be provided by the program office to the contracting officer:

- Performance Work Statement or Statement of Work;
- Copy of the HCA approved Class Justification;

- Statement verifying that the proposed interagency acquisition is within the scope of the Class Determination.

Contracting officers must review the approved Class Justification and statement of inclusion and indicate concurrence or non-concurrence within seven business days. If the contracting officer does not concur, then the documents will be returned to the program office with an explanation.

The program office is responsible for providing a copy of the approved Class Justification and the contracting officer's concurrence that the individual interagency acquisition falls within the Class Justification to the IASSC.

17.5.1.9 Federally Funded Research and Development Centers (FFRDC).

Federally Funded Research and Development Center (FFRDC) means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and (1) A long-term relationship is contemplated; (2) Most or all of the facilities are owned or funded by the Government; and (3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship (FAR 2.101).

A Master Government List of FFRDCs is maintained by the National Science Foundation website.

Per FAR 17.503(e), non-sponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See FAR 35.017 for policy governing the establishment, use, review, and termination of FFRDCs; see also FAR 6.302 for procedures to follow when using other than full and open competition.)

The non-sponsoring agency shall provide to the sponsoring agency:

- Necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry; and
- An approved Economy Act D&F, if applicable.

17.5.1.10 Reporting Requirements.

In accordance with FAR 17.504(a), the senior procurement executive shall submit to the Director of the Office of Management & Budget an annual report on interagency acquisitions per OMB data call notification.

Managers of OGD's Interagency Agreement Shared Service Center will assist OAS with compiling the necessary data in preparation for responding to the report.

17.5.1.11 Appendices

17.5.1-A Economy Act Determination and Findings (D&F) Template

EPAAG Appendix 17.5.1-A

INSTRUCTIONS FOR FILLING OUT THE ECONOMY ACT DETERMINATION AND FINDINGS FOR BOTH ASSISTED AND DIRECT ACQUISITIONS (January 2020)

The Economy Act ([31 U.S.C.1535](#)) authorizes agencies to enter into agreements to obtain supplies or services from another agency through interagency acquisitions when more specific statutory authority does not exist.

The FAR states that each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). Specific language to be included in an Economy Act D&F is contained in FAR 17.502-2(c)(1).

Please note that including the required language under FAR 17.502-2(c)(1) in the D&F is not enough. FAR 1.704(d) requires that the information provided under the Findings section must detail the particular circumstances, facts, or reasoning essential to support the determination.

The D&F must include enough facts to clearly and convincingly justify the determination. The D&F should be a stand-alone document in that someone not familiar with the requirement should be able to review the document and fully understand why the D&F is necessary.

Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

Instructions: Remove all language in blue on the D&F template and insert applicable information. Remove non-applicable signature blocks.

ECONOMY ACT DETERMINATION AND FINDINGS

I have reviewed the requirements for *<insert a brief description of the supplies or services>*. In accordance with the Economy Act, 31 U.S.C. 1535, and Federal Acquisition Regulation (FAR) 17.502-2, the U.S. Environmental Protection Agency intends to conduct an interagency acquisition with *<insert name of the servicing/awarding agency>*, which will contract for these *< insert either supplies or services>* on EPA's behalf.

FINDINGS

Pursuant to the requirements of FAR 17.502-2(c), I hereby find that:

1. The required *< insert either supplies or services>* cannot be obtained as conveniently or economically by contracting directly with a private source.

[Explain why the required supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source (results of market research, cost-benefit analysis, etc.)

Explain why using another agency's contracting office and contract is in the best interest of the agency.

If applicable, provide the rationale for not using an existing EPA vehicle, such as the category management vehicles or Remedial Acquisition Framework (RAF) vehicles.

Supporting documentation can be attached to the D&F.]

2. *[Address the following circumstances as they apply. Delete any that do not apply]*

The acquisition will appropriately be made under existing contract no. *<insert contract number>* of the *<insert name of the servicing activity/agency>*, entered into before placement of the order, to meet the requirements of servicing agency for the same or similar supplies or services.

The *<insert name of the servicing activity/agency>* has capabilities or expertise to enter into a contract for such supplies or services that is not available within this agency. *<Briefly describe the capabilities and expertise that EPA lacks that the servicing activity/agency can provide.>*

The *<insert name of the servicing activity/agency>* is specifically authorized by law or regulation to purchase these supplies or services on behalf of other agencies. *<Cite the law or regulation.>*

3. Use of an interagency acquisition for this requirement is in the best interest of the government.

DETERMINATION

Based on the above findings, I hereby determine that an interagency acquisition for *<insert a brief description of the requirement>* with *<insert name of servicing agency>* is in the government's best interest under the authority of the Economy Act of 1932.

This determination is accurate and complete to the best of my knowledge, information and belief.

<Insert Name of Program Office Official>
<Insert Title>
<Insert Office>

 Date

<Approval of the SRO is required if the interagency acquisition is valued over \$1M. If not applicable, then delete signature block>

Concur (EPA Order 1130.2A)

<Insert Name of Senior Resource Official>
<Insert Title>
<Insert Office>

 Date

Approved (FAR 17.502-2(c)(2))

<Insert Name of Contracting Officer>
<Insert Title>
<Insert Office>

 Date

<Approval of the SPE is only required if the servicing agency is not covered by the FAR (FAR 17.502-2(c)(2)). If not applicable, then delete signature block>

Approved (FAR 17.502-2(c)(2))

 Kimberly Y. Patrick
 Senior Procurement Executive
 Office of Acquisition Solutions

 Date

CHAPTER 19 – SMALL BUSINESS PROGRAMS

Section 19.8 - Contracting with the Small Business Administration (The 8(a) Program)

Subsection 19.8.1 – SBA-EPA Partnership Agreement (March 2020)

This subsection was previously Unit 19.1 of the Acquisition Handbook.

19.8.1.1 Purpose.

[The Partnership Agreement between the U.S. Small Business Administration \(SBA\) and the U.S. Environmental Protection Agency \(EPA\)](#) delegates SBA's contract execution functions to EPA and establishes the basic procedures for expediting the award of 8(a) contract requirements.

19.8.1.2 Background.

Under the 8(a) Business Development Program, SBA is authorized to enter into all types of contracts with other Federal agencies and to subcontract the performance of these contracts to qualified Participants in the 8(a) Business Development Program. The [SBA-EPA Partnership Agreement](#) delegates SBA's 8(a) Program contract execution authority to EPA.

19.8.1.3 Authority/Applicability.

The Partnership Agreement provides for the award of contracts, modifications, options, and purchase orders under the provisions of Section 8(a) of the Small Business Act as implemented by FAR Subpart 19.8 and SBA's 8(a) Business Development Program regulations found at 13 C.F.R. §124 Subpart A.

19.8.1.4 Definitions [Reserved].

19.8.1.5 Policy.

When making awards directly to 8(a) participants, Contracting Officers shall follow the instructions in the [SBA-EPA Partnership Agreement](#), Appendix 19.8.1-A, effective November 20, 2012.

Amendment 1 to
PARTNERHSIP AGREEMENT
Between
The U.S. Small Business Administration
And
The U.S. Environmental Protection Agency

Based on threshold changes reflected in FAR Case 2014-022, *Inflation Adjustment of Acquisition-Related Thresholds*, the following changes will be effective October 1, 2015:

IV. RESPONSIBILITIES

A. SBA's Responsibilities.

4. (a) Sole Source Procurements.
 - ii. Absent a notification of rejection within five (5) working days of receipt of the offer, acceptance may be assumed on the sixth (6th) working day unless an extension has been requested and accepted, **except** for provision of FAR § 19.808-1 for 8(a) sole-source procurements that exceed \$22 million.
 - iii. For procurement over \$22 million, if the **Environmental Protection Agency** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **Environmental Protection Agency** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD).

B. Responsibilities of the Environmental Protection Agency

13. shall ensure that for a procurement over \$22 million, if the **Environmental Protection Agency** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **Environmental Protection Agency** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD);
14. shall ensure that the **Environmental Protection Agency's** contracting officers execute a Justification and Approval (J&A) when awarding a sole-source contract for over \$22 million and approved by the appropriate agency official. All J&As and related information must be made public after award. See FAR § 6.303 and 19.808;
15. Each justification for a sole-source 8(a) contract over \$22 million shall include the following information:

XI. ADDITIONS/CHANGES

3. The contracting officer shall justify the use of a sole-source contract for \$22 million or more in writing in accordance with FAR § 6.303 and 19.808;
4. For procurement over \$22 million, if no acceptance or rejection letter has been provided by the District Office on the 6th working day the **Environmental Protection Agency** will contact the Associate Administrator for Business Development.

APPENDIX 19.8.1-A
PARTNERHSIP AGREEMENT
Between
The U.S. Small Business Administration
And
The U.S. Environmental Protection Agency

Sections 7(j) and 8(a) of the Small Business Act (the Act) (15 U.S.C. §§ 636 (j) and 637(a)) authorize the U. S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development (BD) Program. The 8(a) BD Program promotes the development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete in the mainstream of the American economy. (15 U.S.C. § 631(f)(2)). Small business development is accomplished by providing various forms of management, technical, financial and procurement assistance. Additionally, pursuant to section 8(a) of the Act, SBA is authorized to enter into all types of contracts with other Federal agencies and to subcontract the performance of these contracts to qualified Participants in the 8(a) BD Program.

I. PURPOSE

The purpose of this Partnership Agreement (PA) between SBA and the **Environmental Protection Agency** is to delegate SBA's contract execution functions to the Environmental Protection Agency per the requirements of 13 Code of Federal Regulations C.F.R. § 124.501. The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU) or PA with the **Environmental Protection Agency** or subordinate agencies on the issue of expediting the award of requirements pursuant to Section 8(a) of the Act.

Failure to sign this PA will require the **Environmental Protection Agency** to utilize the prescribed processes to contract with the SBA as stated in the Federal Acquisition Regulation (FAR) Subpart 19.8.

II. OBJECTIVES

- A. To delineate the responsibilities as they relate to the oversight, monitoring and compliance with procurement laws and regulations governing 8(a) contracts between SBA and the **Environmental Protection Agency**;
- B. To establish the procedures for offer and acceptance between SBA and the **Environmental Protection Agency**;
- C. To establish that SBA will respond to an offering letter within five (5) working days if the contract is valued at more than the simplified acquisition threshold and within two days of receipt if the contract is valued at or below the simplified acquisition thresholds. See 13 C.F.R. § 124.503(a)(3);

- D. To emphasize that although SBA delegates the authority to sign contracts on its behalf, it remains the prime contractor on all 8(a) contracts awards, modifications, options and purchase orders, and must receive copies of all contracts and subsequent modifications;
- E. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting process;
- F. To monitor the Environmental Protection Agency's fulfillment all requirements outlined in the PA quarterly;
- G. To suspend or rescind the delegation of this PA if the **Environmental Protection Agency** has violated any terms and conditions of the PA.

III. SCOPE

The PA provides for the award of contracts, modifications, options and purchase orders under the provisions of Section 8(a) of the Act as implemented by the FAR Subpart 19.8 and SBA's 8(a) BD program regulations found at 13 C.F.R. §124, (Subpart A).

The PA encompasses all competitive and non-competitive acquisitions of requirements offered by the **Environmental Protection Agency** contracting offices and accepted by SBA for the 8(a) BD Program.

The PA applies to all SBA offices and all the **Environmental Protection Agency** contracting offices, as defined in FAR § 2.101 and deemed appropriate by the head of the agency, as defined in FAR § 2.101, for the Environmental Protection Agency.

IV. RESPONSIBILITIES

B. SBA's Responsibilities.

SBA

1. delegates to the **Environmental Protection Agency** for re-delegation to all warranted **Environmental Protection Agency's** contracting officers, its authority under section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) Participants. In accordance with 13 C.F.R. §124.501(a), SBA delegates its 8(a) contract execution function. SBA remains the prime contractor on all 8(a) contracts and the 8(a) Participant remains the SBA's subcontractor;
2. will implement its responsibilities under this PA through uniform procedures for use by all SBA offices;

3. will provide training for the **Environmental Protection Agency** contracting officers and small business specialists, on the SBA's 8(a) BD Program and various aspects of the PA;
4. shall review the **Environmental Protection Agency's** offering letters, issue acceptance or rejection letters, and make eligibility determinations for award.

(a) Sole Source Procurements.

- i. SBA will issue either an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.
- ii. Absent a notification of rejection within five (5) working days of receipt of the offer, acceptance may be assumed on the sixth (6th) working day unless an extension has been requested and accepted, **except** for provision of FAR § 19.808-1 for 8(a) sole-source procurements that exceed \$20 million.
- iii. For procurement over \$20 million, if the **Environmental Protection Agency** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **Environmental Protection Agency** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD).
- iv. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determination of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations 13 C.F.R. §124.503(b), 124.504(c) and 124.112.

(b) Competitive Acquisitions.

- i. SBA will issue an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.
- ii. Absent notification of rejection within five (5) working days of receipt of the offer, the procuring activity may seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD). If the procuring activity

does not receive a reply from the AA/BD within five (5) working days of the AA/BD's receipt of the offer, the procuring activity may assume acceptance on the sixth (6th) working day. See citation 13 C.F.R. §124.503(5).

- iii. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determination of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations 13 C.F.R. §124.503(b), 124.504(c) and 124.112.
- iv. Within five (5) working days after a request from the contracting officer, SBA shall issue an eligibility determination for the apparent successful offer of the competition as prescribed by SBA's regulations at 13 C.F.R. §124.507(b).

(c) Acquisitions Valued at or Below the Simplified Acquisition Procedures Threshold. (SAP).

- i. No offering or acceptance letter is required for requirements valued at or below the simplified acquisition threshold in accordance with the delegation authority.
 - ii. SBA will review the program eligibility of the 8(a) Participant within two (2) working days after a request from the contracting officer.
 - iii. Absent a notification that the selected 8(a) Participant is ineligible for the award within two (2) working days, the procuring agency may assume the 8(a) Participant is eligible and proceed with award, as prescribed by SBA's regulations at 13 C.F.R.124.503(a)(4)(i).
- 5. shall review and approve all proposed joint venture agreements involving 8(a) Participants before 8(a) contract award;
 - 6. may provide 8(a) Participants with contract negotiation assistance or direct them to appropriate resources where they can obtain technical assistance in contract negotiations when requested by either the 8(a) Participant or the Environmental Protection Agency contracting officer;
 - 7. shall retain its appeal authority in accordance with FAR § 19.810;
 - 8. shall retain the right to perform on-site agency reviews to ensure contract compliance;

9. may identify a requirement for an 8(a) Participant for a possible award. SBA will submit capability statements to the appropriate procuring activities for the purpose of matching requirements consistent with the 8(a) Participant's capability;
10. shall retain the responsibility for ensuring that 8(a) Participants comply with all applicable provisions relating to continuing eligibility for 8(a) BD Program participation per 13 C.F.R. §124.112;
11. shall select an appropriate 8(a) Participant when the Environmental Protection Agency submits an open offering letter for a sole source requirement.

B. Responsibilities of The Environmental Protection Agency

The Environmental Protection Agency

1. shall receive and retain SBA's delegation of contract execution and review functions by reporting all 8(a) contract awards, modifications, options and purchase orders to SBA until such time as the agreement is amended or terminated;
2. shall adhere to all provisions of contractual assistance identified in 13 C.F.R. §124.501 through 124.520; as well as the applicable provisions of FAR Subpart 19.8;
3. shall determine which requirements are suitable for offering to the 8(a) BD program in accordance with FAR, Subpart 19.8, and, where appropriate, identify in conjunction with the appropriate SBA servicing office, 8(a) Participants capable of performing these requirements;
4. shall retain responsibility for compliance with the limitations on subcontracting requirement and all applicable provisions of FAR§ 52.219-14 and any of the **Environmental Protection Agency** regulations;
5. shall include provisions in all contract awards, modifications, options and purchase orders awarded or issued under the 8(a) BD Program that require Program Participants to comply with the Subcontracting Limitations, and shall conduct and document an assessment at the time of contract award of the Participant's ability to comply with the Subcontracting Limitations;
6. shall provide a copy of any signed contract, as defined in FAR § 2.101, including modifications, options and purchase orders executed to an 8(a) firm under the provisions of this PA to the SBA servicing district office

within 15 working days of the date of award. See citation 13 C.F.R. § 124.512(b);

7. shall inform contracting officers and other warranted officials and their equivalents who are awarding 8(a) contracts of their responsibilities concerning this agreement;
8. shall ensure that contracting officers and other warranted officials and their equivalents obtain training on their obligations under this PA and the subcontracting limitations of FAR § 52.219-14 and 13 C.F.R. § 124.510 and 125.6;
9. shall include monitoring and oversight provisions for all contract awards, modifications, options and purchase orders to ensure that all contracts comply with the performance requirements (Limitations on Subcontracting) of FAR § 52.219-14 and 13 C.F.R. § 124.510 and § 125.6;
10. shall request an eligibility determination from SBA's district office responsible for servicing the selected 8(a) Participant when an 8(a) Participant has been identified on all acquisitions valued at or below the simplified acquisition threshold prior to issuance of the purchase order;
11. shall submit the offering letter for sole source requirements exceeding the simplified acquisition threshold to SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) Participant has been identified. See FAR 19.804-2;
12. shall report all 8(a) awards in the Federal Procurement Data System – Next Generation (FPDS-NG);
13. shall ensure that for a procurement over \$20 million, if the **Environmental Protection Agency** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **Environmental Protection Agency** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD);
14. shall ensure that the **Environmental Protection Agency's** contracting officers execute a Justification and Approval (J&A) when awarding a sole-source contract for over \$20 million and approved by the appropriate agency official. All J&As and related information must be made public after award. See FAR § 6.303 and 19.808;
15. Each justification for a sole-source 8(a) contract over \$20 million shall include the following information:

- (a) A description of the needs of the agency concerned for the matters covered by the contract.
 - (b) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (see FAR §19.805-1).
 - (c) A determination that the use of a sole-source contract is in the best interest of the agency concerned.
 - (d) A determination that the anticipated cost of the contract will be fair and reasonable.
 - (e) Such other matters as the head of the agency concerned shall specify for purposes of this section.
16. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where the **Environmental Protection Agency's** contracting activity is located, when the Environmental Protection Agency has not identified a specific 8(a) Participant for a requirement. See FAR 19.804-2;
17. shall submit the offering letter for competitive 8(a) requirements to the SBA district office that services the geographical area where the **Environmental Protection Agency's** contracting activity is located. Exceptions: the offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of construction contracts to be performed overseas, the offering letter shall be submitted to SBA's Headquarters. See FAR 19.804-2;
18. shall request an eligibility determination prior to final award in all 8(a) competitive acquisitions;
19. shall ensure that all contracts awarded pursuant to this PA contain provisions that require:
- (a) SBA's approval of novation agreements submitted by the 8(a) Participant; and
 - (b) advance notice to SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;
20. shall ensure that all NAICS codes for all 8(a) contracts are applied in accordance with FAR § 19.102;
21. shall adhere to all limitations on sub-contracting provisions of FAR § 19.811-3;

22. shall add language to every contract stating that, even though SBA may not be identified in section A of the contract, it is still the prime contractor on the contract;
23. shall provide all proposed 8(a) joint ventures to SBA for approval before 8(a) contract(s) award;
24. awarded contracts to 8(a) firms outside the 8(a) authority will continue to be counted toward SDB negotiated goals;
25. a Contracting Officer shall notify SBA in writing of their request to release a requirement from the 8(a) BD Program. The written notification should be sent to the cognizant SBA district office serving the geographical area in which the procuring agency is located. The Contracting Officer shall include the reason(s) for the request, the procurement history of the requirement, the incumbent name, the assigned NAICS Code and the Statement of Work. The final decision rests with the AA/BD; and
26. shall provide SBA with access to all non-classified information in contract files so that SBA can perform on-site agency reviews to ensure that procuring agencies are complying with the terms and conditions of this agreement.

V. CONTRACT EXECUTION

The **Environmental Protection Agency's** contracting officer may make direct award of a contract to the 8(a) Participant, but only after the requirement has been offered to and accepted by SBA. Acquisitions valued at or below the simplified acquisition threshold, as defined in FAR § 2.101, and per 13 C.F.R.

§ 124.503(a)(4)(ii), require no offer or acceptance letter; however;

- (a) a program eligibility determination of the selected 8(a) Participant from SBA is required; and
- (b) the procuring activity must notify SBA of all 8(a) awards made under this authority, per 13 C.F.R. § 124.503(a)(4)(ii). Contract execution shall be on the appropriate form as specified in FAR or by the **Environmental Protection Agency** regulation. The "Issued by" block shall identify the awarding **Environmental Protection Agency's** office. The SBA district office for the 8(a) Participant shall be identified in the award document. The 8(a) Participant's name and address shall be listed as the contractor. The **Environmental Protection Agency's** contracting activities are responsible for issuing procurement instrument identification numbers. SBA will not issue subcontract numbers.

VI. TERM/TERMINATION

This PA is effective on the date of SBA's signature. This PA does not have an expiration date; however, it can be suspended based on violation of the PA terms and conditions. Either SBA or the **Environmental Protection Agency** may terminate this PA upon 30 calendar days advance written notice to the other party.

VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the parties.

VIII. CONDITIONS

- A. Contracts awarded to 8(a) firms outside the 8(a) authority will continue to be counted toward SDB negotiated goals.
- B. SBA reserves the right to suspend or rescind the authority of this PA with the Environmental Protection Agency for failure to submit copies to SBA of contract awards, modifications, options and purchase orders within 15 working days of award, failure to adequately monitor 8(a) contract compliance requirements, or if the **Environmental Protection Agency** otherwise fails to follow the terms of this PA.
- C. SBA reserves the right to suspend or rescind the authority of this PA with the **Environmental Protection Agency** for failure to update the Federal Procurement Data System – Next Generation (FPDS-NG) so that SBA can adequately measure and gauge the 8(a) contracts being awarded using the guidelines outlined in the PA, which will be conducted by the SBA quarterly.
- D. SBA has the right to conduct periodic compliance on-site agency reviews of the files of all contracts awarded pursuant to Section 8(a) authority and this Agreement. The delegated authority may be rescinded when on-site agency review findings indicate a pattern of failure to comply with 8(a) BD program regulations that govern award and administration of such contracts.
- E. Where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition (i.e. option) must remain in the 8(a) BD program unless SBA agrees to release it. If the **Environmental Protection Agency** would like to fulfill a follow-on or renewable acquisition (i.e. option) outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so. SBA's release for non-8(a) competition will be in accordance with 13 C.F.R. § 124.504. SBA will process the written request within 10 business days of receipt by the AA/BD.

XI. ADDITIONS/CHANGES

1. This PA will take effect on the date of SBA's signature. This PA does not have an expiration date.
2. SBA shall provide monitoring and oversight of all 8(a) contracts awarded to ensure that the serving district office is receiving a copy of each contract, modifications, options and purchase orders executed under this PA. This process will be conducted quarterly by data utilization of the Federal Procurement Data System-Next Generation (FPDS-NG).
3. The contracting officer shall justify the use of a sole-source contract for \$20 million or more in writing in accordance with FAR § 6.303 and 19.808;
4. For procurement over \$20 million, if no acceptance or rejection letter has been provided by the District Office on the 6th working day the **Environmental Protection Agency** will contact the Associate Administrator for Business Development.
5. **Environmental Protection Agency** shall adhere to all limitations on sub-contracting provisions of FAR § 19.811-3.

X. ADMINISTRATION

For the Environmental Protection Agency:

John R. Bashista
Director, Office of Acquisition Management
1200 Pennsylvania Ave., NW
Ronald Reagan Bldg., Room 61210
Washington, DC 20460
202-564-4310
202-565-2473 (fax)
Bashista.John@epa.gov

For SBA:

Sharon Gurley
Director, Office of Program Review
Office of Business Development
409 3rd Street, SW, 8th Floor
Washington, DC 20416
(202) 205-7084
(202) 481-5539 (fax)
Sharon.Gurley@sba.gov

XI. ACCEPTANCE

Authorized by and on behalf of their respective agencies, the undersigned parties hereby accept the terms and conditions of this agreement.

For:

The Environmental Protection Agency

/s/ 10/20/12

Date

John R. Bashista
Senior Procurement Executive

For:

SBA

/s/ 11/03/12

Date

A. John Shoraka
Associate Administrator for
Government Contracting and
Business Development

/s/ 11/20/12

Date

Mina A. Wales (A)
Director
Office of Strategic Alliances

CHAPTER 22 – APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Section 22.4 - Labor Standards for Contracts Involving Construction

Subsection 22.4.1 - Application of Labor Standards to Demolition Contracts (August 2014)

This subsection was previously Unit 22.2 of the Acquisition Handbook.

22.4.1.1 Purpose.

This subsection provides clarification from the Department of Labor (DOL) on the application of labor standards to demolition contracts.

22.4.1.2 Background [Reserved].

22.4.1.3 Authority/Applicability [Reserved].

22.4.1.4 Definitions [Reserved].

22.4.1.5 Policy.

What follows below are the various documents that provide clarification or guidance for the labor standards in effect for demolition contracts:

DOL [AAM 190](#) - Application of Labor Standards to Demolition Contracts (Appendix 22.4.1-A)

DOL [AAM 153](#) - Application of Davis-Bacon Act to Contracts for Asbestos and/or Paint Removal (Appendix 22.2-B)

DOL [AAM 187](#) - Application of Labor Standards Provisions to Hazardous Materials (HAZMAT) Cleanup Contracts (Appendix 22.4.1-C)

DOL [Standard Form 98](#) (weblink to Form) - Notice of Intention to Make a Service Contract and Response to Notice

APPENDIX 22.4.1-A
APPLICATION OF LABOR STANDARDS TO DEMOLITION
CONTRACTS

U.S. Department of Labor Employment Standards Administration

Wage and Hour Division
Washington, D.C. 20210

AUG 28 1998

MEMORANDUM NO. 190

TO: ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND
CONTRACTING AGENCIES OF THE DISTRICT OF COLUMBIA

FROM: JOHN R. FRASER /s/e
Acting Administrator

SUBJECT: Application of Labor Standards to Demolition Contracts

This memorandum is intended to clarify the proper application of labor standards statutes - specifically the Davis-Bacon Act (DBA) and the McNamara O'Hara Service Contract Act (SCA) to contracts for dismantling or demolition of public buildings or public works. Over the years, the Department of Labor has issued numerous opinion letters and has provided guidance to contracting agencies on this subject in prior All Agency Memoranda (AAM); however, the Department continues to receive questions regarding the proper application of DBA and SCA to demolition contracts.

The DBA applies to contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work. The SCA applies to contracts for the principal purpose of furnishing services through the use of service employees. Section 7(l) of SCA specifically excludes from coverage under SCA any contract for construction, alteration, and/or repair of a public building or a public work. Thus, if a demolition contract is subject to DBA, then SCA does not apply; however, if the demolition contract is not subject to DBA, then SCA would apply to that contract.

In determining whether a demolition contract is subject to DBA, it is necessary to look at the entire scope of that contract as well as other contracts that might be part of the same overall project. Based on a decision by the Attorney General (38 Op.Atty.Gen. 229), demolition alone is not necessarily considered to be "construction, alteration, and/or repair of a public building or a public work." However, if subsequent construction at the site is planned as part of the same contract or if subsequent construction is contemplated as part of a future construction project, then the demolition work is considered to be part of the overall construction project and DBA is applicable to the construction

contract.

In some cases, the nature of the demolition or removal work alone might be considered construction activity covered by DBA. For example, removal of asbestos from a facility that will not be demolished is considered to be an alteration or repair of the facility even though the asbestos may not be replaced with nonhazardous insulation material (see AAM No. 153). In addition, certain hazardous waste removal contracts that involve substantial earth moving to remove contaminated soil and recontour the surface may also be considered construction contracts subject to DBA (see AAM No. 187).

If, after considering all of the facts, it is determined that DBA does not apply to the demolition contract, then SCA would apply. However, because the nature of the demolition work does not change, the Department of Labor has determined that the prevailing rate for such work under either DBA or SCA should be the same. Thus, when demolition work is performed as part of an SCA contract, the Department of Labor utilizes the prevailing rates established under DBA as the basis for the wage determination issued under SCA for that contract. This wage determination approach and methodology was challenged and upheld by the Board of Service Contract Appeals in Case No. 86-SCA-WD-1. Because standard SCA wage determinations are not used for demolition contracts subject to SCA, it is important that contracting agencies clearly identify the service as demolition when requesting SCA wage determinations for such contracts.

If a contracting agency has any question regarding coverage under DBA or SCA for demolition and removal contracts -- especially contracts for the removal of hazardous materials -- they should contact the Wage and Hour Division, Government Contracts Enforcement Team at 202-693-0064 or write to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

APPENDIX 22.4.1-B

**APPLICATION OF THE DAVIS-BACON ACT TO CONTRACTS
FOR ASBESTOS AND/OR PAINT REMOVAL**

U.S. Department of Labor Employment
Standards Administration Wage and Hour
Division Washington, D.C. 20210

AUG 6, 1990

MEMORANDUM NO. 153

TO: ALL Government Contracting Agencies of the Federal Government and the District of
Columbia

FROM: SAMUEL D. WALKER/s/ 9
Acting Administrator

SUBJECT: Application of the Davis-Bacon Act to Contracts for Asbestos and/or Paint Removal

This memorandum clarifies the application of Government contract labor standards coverage to contracts calling for asbestos or paint removal from public buildings or public works and structural components thereof. We have learned that some contracting agencies are incorporating the Davis-Bacon Act (DBA) requirements in these contracts while others are including the McNamara-O'Hara Service Contract Act (SCA) requirements. To ensure greater consistency, we are providing unitary guidance on the subject.

The DBA applies to Federally-financed contracts in excess of \$2,000 for the construction, alteration, and/or repair, including painting and decorating, of a public building or a public work. The SCA applies to Government contracts, the principal purpose of which is the furnishing of services through the use of service employees.

We have determined, after substantial review, that removal of asbestos or paint from public buildings or public works constitutes building alteration within the statutory language of DBA because asbestos or paint removal clearly alters those buildings or works, regardless of whether subsequent reinsulating or repainting is being considered. This view is consistent with previous determinations that contracts for sandblasting or hydrostatic cleaning of public buildings are subject to DBA.

Accordingly, any Federal or District of Columbia contract in excess of \$2,000 that calls for asbestos or paint removal is subject to DBA and must include its stipulations and the applicable wage decision.

APPENDIX 22.4.1-C

**APPLICATION OF LABOR STANDARDS PROVISIONS TO
HAZARDOUS MATERIALS (HAZMAT) CLEANUP CONTRACTS**

U.S. Department of Labor Employment
Standards Administration Wage and
Hour Division Washington, D.C. 20210

NOV 18, 1996

MEMORANDUM NO. 187

TO: All Government Contracting Agencies of the Federal Government and the District of
Columbia

FROM: MARIA ECHAVESTE /s/
Administrator

SUBJECT: Application of Labor Standards Provisions to Hazardous Materials (HAZMAT)
Cleanup Contracts

The Department of Labor has received numerous complaints regarding the misapplication of the McNamara-O'Hara Service Contract Act (SCA) and the Davis-Bacon Act (DBA) to the subject contracts. Accordingly, All Agency Memorandum No. 155, originally issued on March 25, 1991, is reissued to provide guidance with respect to proper application of DBA and SCA to HAZMAT cleanup contracts. In addition, copies of pertinent materials developed by the Environmental Protection Agency, in conjunction with the Department of Labor, are also attached to provide such guidance.

In all future situations where a contracting agency submits an SF-98 (Attachment 52.2B) for a wage determination under SCA, the SF-98 should clearly identify that the contract is for HAZMAT cleanup and should describe as completely as possible the scope of work to be performed under the contract (see Attachment 52.2A). If there are any concerns as to proper labor standards coverage, the SF98 submittal should also include a copy of the contract statement of work for coverage review by this Department.

Section 22.8 - Equal Employment Opportunity

Subsection 22.8.1 - Equal Employment Opportunity Clearance Procedures (August 2018)

22.8.1.1 Purpose.

This policy requires contracting officers to obtain and file proper Equal Employment Opportunity clearance in a timely manner, and to distribute equal opportunity posters to covered contractors.

22.8.1.2 Background [Reserved].

22.8.1.3 Authority/Applicability.

The authority for this policy is [FAR 22.805](#).

22.8.1.4 Definitions [Reserved].

22.8.1.5 Policy.

In accordance with [FAR 22.805](#) the contracting officer shall obtain an [Equal Employment Opportunity Clearance](#) from the U.S. [Department of Labor](#), Office of Federal Contract Compliance Programs ([OFCCP](#)) regional office serving the area where the proposed contractor's or subcontractor's corporate home office or branch office is located. A separate written request (via letter, email or other correspondence) shall be submitted to the appropriate regional office for each contractor and subcontractor.

22.8.1.5.1 Request for Equal Opportunity Clearance

The contracting officer shall submit a written request via letter, email or other correspondence, to the appropriate [OFCCP](#) regional office (*see addresses at 22.8.1.5.3*) at least 30 days before the proposed award date. Whenever the procedure specified in [FAR 22.805\(a\)\(7\)](#) is used to request an expedited clearance, the contract file shall be documented by the contracting office to show actions taken.

A copy of each written request and each response received from [OFCCP](#) shall be forwarded to the [EPA Office of Civil Rights](#).

22.8.1.5.2 Equal Opportunity Poster

Each contracting officer shall obtain from the [Department of Labor](#) sufficient quantities of the poster entitled "[Equal Opportunity is the Law](#)." The contracting officer shall ensure that this poster is included with the contractor's copy at the final distribution of covered contracts.

22.8.1.5.3 OFCCP Regional Offices and Key Personnel

The names, addresses and contact information of [Department of Labor OFCCP](#) regional offices and key personnel (e.g., regional director, outreach coordinator) can be found [here](#).

Section 22.10 – Service Contract Labor Standards

Subsection 22.10.1 – Compliance with FAR Clause 52.222-43, *Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (Multiple Year and Option Contracts)* (June 2015)

This subsection was previously Section 52.1 of the Acquisition Handbook.

22.10.1.1 Purpose.

This subsection sets forth EPA policy regarding use of FAR Clause 52.222-43, *Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (Multiple Year and Option Contracts)* (May 2014). Deviations to the clause will be permitted only under extraordinary circumstances for which the contracting officer (CO) can identify the benefit to the Government for allowing such deviation. Contractors will be discouraged from proposing escalation for option years for direct labor and fringe costs for labor categories covered by the clause.

22.10.1.2 Background.

(a) FAR 22.1006 (c) (1) requires use of FAR Clause 52.222-43, or another clause which accomplishes the same purpose, in solicitations and contracts that are expected to result in a fixed-price service contract containing FAR Clause 52.222-41, *Service Contract Labor Standards*, and is a multiple-year contract or a contract with options to renew which exceeds the small purchase limitation.

Clause 52.222-43 limits the amount of price adjustment to the contract for the option years to the contractor's actual increases in wages and fringe benefits to the extent that the increase is made to comply with a particular year's Service Contract Act (SCA) wage determination, Fair Labor Standards Act (FLSA) wage determination, or collective bargaining agreement. Contractors may pay their employees in excess of such amounts, but the Government will only increase the contract by an amount reflecting any actual increase.

(b) In the past, EPA COs had requested and obtained deviations to this clause because contractors proposed escalation for all of their direct labor and fringe costs. In turn COs believed this was appropriate because many of the contract labor categories could not be exactly correlated to labor category descriptions listed in the SCA Directory of Occupations, although some were similar. Further, the technical requirements of the effort demanded that contractors pay higher wages to secure acceptable personnel.

(c) Often, the wage increases provided by contractor company policies included adjustments for other reasons in addition to those required by the SCA. COs believed that without allowing for adequate employee raises, technical performance would be severely impacted.

(d) In 1990, the EPA Office of General Counsel (OGC) issued a written opinion that contractors could not propose escalation for the option years and still use the FAR clause 52.222-43. The OGC position indicated that if a contractor proposed escalation and the CO permitted use of an escalation factor a deviation would be needed such that contractors would agree to waive all rights to price adjustments available under the clause.

(e) This agreement would be necessary because contractor's election to include escalation in their rates for the option years would preclude them from warranting that the prices in the contract do not include any allowance for any contingency to cover increased costs as required by paragraph (b) of the clause.

22.10.1.3 Authority/Applicability.

The authority for this subsection is FAR Part 22.

22.10.1.4 Definitions [Reserved].

22.10.1.5 Policy.

(a) For fixed-price contracts and contracts containing fixed rates, contractors will be discouraged from proposing escalation for direct labor and fringes for covered labor categories. COs shall include clause EPA-H-22-101 as prescribed in 22.10.6 in order to put offerors/contractors on notice for compliance with the requirements of the clause. If an offeror proposes escalation for the direct labor and fringes costs for the option years, the CO shall not negotiate contracts including escalation for direct labor and fringe costs for labor categories covered under this clause.

(b) Accordingly, no deviations to the FAR clause shall be granted except under extraordinary circumstances for which the CO can identify the benefit to the Government for allowing such deviation. No CO shall negotiate or award a contract including escalation for the direct labor and fringe costs for the option years for covered categories unless a deviation has been granted to the FAR clause.

22.10.1.6 Contract Clause

The contracting officer shall insert clause EPA-H-22-101, "COMPLIANCE WITH FAR CLAUSE 52.222-43, *FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)*" in solicitations containing FAR Clause 52.222-43, *Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts)*(May 2014).

CHAPTER 23 – ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Section 23.1 – Sustainable Acquisition Policy

Subsection 23.1.1 - Green Purchasing Plan (October 2015)

This subsection was previously Section 23.1 (IPN 10-01) of the Contracts Management Manual.

23.1.1.1 Purpose.

The purpose of this section is to establish the Environmental Protection Agency's (EPA) Green Purchasing Plan (GPP), formerly known as the Affirmative Procurement Program (APP). The GPP provides Agency-wide guidance for implementing an effective program for acquisition of the following:

- EPA's designated recovered-content products;
- United States Department of Agriculture's (USDA) designated biobased-content items;
- Energy and water efficient products;
- Environmentally preferable products;
- Products using renewable and innovative energy technologies;
- Alternative fuel vehicles/alternative fuel;
- Non-ozone depleting substances;
- Priority chemicals.

As the Federal agency with an environmental mission, EPA has a responsibility to play a leading role in greening Federal procurement. There are many Federal initiatives focusing on green procurement. Some are well established and mandated by regulation. Others are new and/or voluntary. Some focus on a single environmental attribute, while others consider the whole environmental picture. Many of the programs have overlapping components. It is often challenging, even for the well-intentioned contracting officer (CO) or program manager (e.g., Contracting Officer Representative (COR)), to navigate the various programs and comply with requirements. For a concise listing of the green purchasing requirements Agency employees must follow, see the "EPA Green Purchasing Guide" table in the Policy section 23.1.1.5 below.

The GPP is intended to consolidate information and requirements on numerous environmental or green programs, identify the procurement aspects of each program, note similarities and differences amongst the programs, and assign specific roles and responsibilities for successful

operation of each program. Most importantly, the GPP expresses the Agency's commitment to green procurement, and affirmatively sets forth a preference for environmentally preferable products and services, which are produced and performed in an environmentally responsible manner, as well as the distribution, maintenance, reuse, and disposal of such products and services.

An underlying goal of the GPP is to leverage the buying power of the Federal Government to increase and expand markets for products and services that are made or performed in an environmentally responsible manner, as well as the distribution, maintenance, reuse, and disposal of such products and services. Federal procurement of green products and services will not only benefit the environment by reducing pollution, greenhouse gas emissions, and the use of toxic or hazardous chemicals, but also stimulate the development of new green technologies. As a result, environmentally sound services and products will become increasingly available to the general public.

23.1.1.2 Background.

EPA's Green Purchasing Plan (GPP) is a broad program that encompasses the following Federal Programs:

- The Comprehensive Procurement Guidelines (CPG) Program (recovered- content products);
- The BioPreferred Program (formerly known as the Federal Biobased Products Preferred Procurement Program (FB4P));
- The ENERGY STAR and Federal Energy Management Program (FEMP);
- Environmentally Preferable Purchasing (EPP) Program;
- Alternative fuel vehicles/alternative fuels Program;
- The WaterSense Program;
- Significant New Alternatives Program (SNAP) (non-ozone depleting substances);
- Priority chemicals Program.

The first five programs, listed above, impose compliance requirements for Federal procurement officials. WaterSense is a voluntary program for industry that labels water-efficient, high-performing products and programs to help consumers identify them. The last two programs do not specify green procurement requirements, but mandate Federal compliance in arenas other than procurement; buying green can contribute to the success of these programs. All of the programs play an integral part in EPA's GPP.

Background information on each of the programs is discussed below, and the policy section to follow expresses EPA's support for all the programs and encourages consideration of the programs' goals and objectives in the procurement process. The policy section also details the specific, green procurement requirements for the mandatory CPG, BioPreferred, ENERGY STAR/FEMP, and EPP Programs. In accordance with EPA's environmental mission, the Agency plays a leadership role in the green procurement arena, and our GPP encompasses many Federal environmental programs, including those with mandatory procurement requirements and those without.

The CPG, BioPreferred, ENERGY STAR/FEMP, and EPP Programs include mandatory preference programs for the procurement of recovered-content, biobased-content, and energy efficient products and services.

Recovered-content products. The CPG Program (see 23.1.1.5.1.1) which is implemented by EPA's Office of Solid Waste (OSW), promotes the purchase of products containing materials recovered from solid waste. Buying recovered-content products ensures that the materials collected in recycling programs will be used again in the manufacture of new products. OSW designates products that can be made with recovered-content and recommends practices for buying these products. The CPG website may be accessed at: www.epa.gov/cpg. Once a product is designated, procuring agencies are required to purchase it with the highest recovered material content level practicable.

Biobased products. The United States Department of Agriculture (USDA) is responsible for implementing the BioPreferred Program. The BioPreferred Program (see 23.1.1.5.1.2) designates items (groups of products) composed in whole or in significant part of biobased products, forestry materials, or renewable domestic agricultural materials (including plant, animal, and marine, or forestry). This preference program operates similar to the CPG Program. Once an item is added to the BioPreferred procurement list, procuring agencies are required to purchase the product listed with the highest biobased-content practicable. Information available at www.biopreferred.gov includes resources for biobased product manufacturers/federal government vendors, and agency contracting officers and procurement officials.

Energy-efficient products. The ENERGY STAR and the Federal Energy Management Programs (FEMP) (see 23.1.1.5.1.3) are Government-backed programs helping businesses and individuals protect the environment through superior energy efficiency. Products in more than 50 categories, including appliances, light bulbs and lighting fixtures, electronics, office equipment, appliances, and heating and cooling devices, have earned the ENERGY STAR designation. An ENERGY STAR designation indicates energy efficiency and evidences environmental responsibility on the part of the manufacturer. Products that earn the ENERGY STAR designation must meet strict energy efficiency specifications set by the EPA or the Department of Energy (DOE). The ENERGY STAR website may be accessed at: www.energystar.gov. FEMP is a DOE program within the Office of Energy Efficiency and Renewable Energy. It makes purchasing specifications and offers other useful tips to help Federal agencies buy the most efficient equipment. FEMP's information to federal buyers includes ENERGY STAR-qualified products, but it also includes some products for which no ENERGY STAR program has been established. These "FEMP-designated" products are in the top 25% of energy performance within their product category. Please visit the FEMP website at: www.eere.energy.gov/femp/procurement for additional information. This GPP includes guidance on incorporating the ENERGY STAR-qualified and FEMP-designated products into Agency procurements. FEMP also provides guidance to the agencies regarding the appropriate energy use levels for products while in stand-by mode.

Environmentally preferable products and services. Environmentally Preferable Purchasing (EPP) (see 23.1.1.5.1.4) has mandatory Federal and Agency procurement requirements, as well as voluntary or optional components that serve as a resource to assist in greening

procurements. Environmentally preferable products and services are those that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. The product or service comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal. EPP emphasizes the consideration of multiple attributes of a product or service such as life-cycle costs, energy or water efficiency, low toxicity, biobased, recovered-content, and recycleability. The Office of Pollution Prevention and Toxics (OPPT) and the Office of the Federal Environmental Executive (OFEE) have responsibility for this program.

Executive Orders (E.Os.) 13423 and 13514, and Federal Acquisition Regulation (FAR) Subpart 23.7 on environmentally preferable products and services requires use of the Electronic Products Environmental Assessment Tool (EPEAT) when acquiring electronic products such as desktops, notebooks (also known as laptops) and monitors. These EPEAT registered products are, by default, ENERGY STAR qualified as well. The E.Os. requires that 95 percent of purchases of products covered by EPEAT must be EPEAT-registered products, unless there is no EPEAT standard for such products. In addition, EPA has amended its own acquisition regulations to establish a mandatory EPP procurement policy related to green meetings and conferences.

You are encouraged to visit the website www.epa.gov/epp for a wealth of information on EPP, sample statements of work, case studies, and a suite of EPP tools.

Water-efficient products. The WaterSense Program is a voluntary program that labels water-efficient, high-performing products and services. Manufacturers and service providers will be required to submit independent test data from a third-party laboratory or testing agency to certify that their products meet the WaterSense criteria for efficiency and performance. Products and services labeled under the program will include plumbing products, irrigation components and professional training programs, and process water equipment. For more information on the program, and currently certified products and services, visit www.epa.gov/watersense.

Alternative fuel vehicles/alternative fuel. While appropriation law generally prohibits most agencies, including EPA, from using appropriated funds to procure passenger motor vehicles, the Energy Policy Act requires Federal Agencies, when procuring vehicles through approved methods, such as from the General Services Administration (GSA), to purchase alternative fuel vehicles (AFVs) and alternative fuels. AFVs include flex-fuel vehicles capable of using E85 ethanol or gasoline, vehicles fueled with compressed natural gas or liquefied natural gas, and hybrid vehicles. The “SmartWay” program is a good source for information on environmental transportation, and the website at www.epa.gov/greenvehicles offers ideas for incorporating green consideration in procurements for vehicles and alternate fuels. The DOE has compiled information on alternative fuels on its web site www.eere.energy.gov/afdc/index.html. Additionally, both the EPA and DOE have been promoting the purchase of greener vehicles by specifying good fuel economy and environmental performance. EPA’s Green Vehicle Guide at www.epa.gov/greenvehicles provides information about the environmental performance of vehicles based on emission levels, air pollution, fuel economy values, and global warming impacts.

Products containing non-ozone depleting substances. The Federal green procurement program also requires Agencies to minimize the procurement of ozone-depleting substances. When acquiring items that contain, use, or are manufactured with ozone-depleting substances, procurement officials must give preference to alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. Chemicals used in refrigeration, air conditioning, fire suppression, and adhesives are a few common examples of ozone-depleting substances. A more comprehensive list, and alternatives to ozone-depleting supplies, can be found in EPA's Significant New Alternatives Policy (SNAP) Program at www.epa.gov/ozone/snap.

Priority chemicals. The Priority Chemicals Program is another component of the Federal green procurement program. It draws upon EPA's National Partnership for Environmental Priorities (NPEP) program, which focuses efforts on reducing 31 priority chemicals found in our nation's products and wastes. The NPEP program recommends solutions to eliminate, or substantially reduce, the use of priority chemicals in production, or alternatively, recover or recycle these chemicals where they cannot easily be eliminated or reduced at the source. Additional information on the priorities chemical program can be found at: www.epa.gov/epaoswer/hazwaste/minimize/chemlist.htm.

As described above, EPA's GPP serves to implement both mandatory and non-mandatory green programs into the Agency's procurement policy. As a result, the GPP serves as a comprehensive program that defines goals, establishes procurement requirements, and ensures compliance. In accordance with Federal policy, EPA's GPP includes the following four components:

- (a) A preference component to set forth the Agency's preference for items made with recovered materials, biobased materials, and other green considerations;
- (b) A promotion component to identify how the program shall be promoted;
- (c) An estimation and certification component which sets forth procedures for obtaining and verifying estimates and certifications of the content of recovered materials and biobased materials in products purchased by the Agency; and
- (d) A review and monitoring component to ensure compliance with, and effectiveness of, the GPP.

23.1.1.3 Authority/Applicability.

The following documents provide authority for the Agency's GPP:

- (a) Resource Conservation and Recovery Act, (RCRA), Section 6002;
- (b) Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance;

- (c) Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management (revoked Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition; Executive Order 13123, Greening the Government Through Efficient Energy Management; Executive Order 13148, Greening the Government Through Leadership in Environmental Management; and Executive Order 13149, Greening the Government Through Fleet and Transportation Efficiency);
- (d) Executive Order 13221, Energy Efficient Standby Power Devices;
- (e) Farm Security and Rural Investment Act of 2002, Section 9002;
- (f) Office of Federal Procurement Policy (OFPP), Policy Letter 92-4;
- (g) EPA Comprehensive Procurement Guidelines (CPG);
- (h) USDA BioPreferred Program;
- (i) Energy Independence and Security Act of 2007, Section 524;
- (j) Energy Policy Act (EPACT) of 2005; and
- (k) Federal Acquisition Regulations (FAR) Part 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
<http://www.acquisition.gov>
- (l) EPA Acquisition Regulation (EPAAR) Part 1523—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

The requirements of this section apply to all purchases of items listed in the CPG Program, the BioPreferred Program, the ENERGY STAR Program, FEMP's lists of energy efficient products and the EPP Program. Furthermore, it applies to all purchases of vehicles, items that are ozone-depleting, and chemicals named to the priority chemical list. The GPP applies to procurements at all dollar values including orders below the micro-purchase threshold, which may be made with a purchase card.

In addition to supply contracts, this section is applicable to all Agency acquisitions for services where CPG, BioPreferred, ENERGY STAR/FEMP, and EPP, items and services may be supplied or used in performance.

In accordance with Federal statutes (RCRA, Section 6002, and FSRIA, section 9002), agencies are required to comply with the CPG and the BioPreferred programs for those products in which the Agency procured in excess of \$10,000 in the preceding fiscal year, or when the instant purchase alone exceeds \$10,000. EPA routinely exceeds this threshold in common CPG items such as paper and office supplies, and consistently comes close to exceeding it in all product categories. Therefore, for purposes of compliance with the GPP, procurement personnel shall assume that the \$10,000 threshold is met by the Agency.

The non-mandatory nature of some Federal programs, such as the WaterSense Program, should not be interpreted to mean that the programs are outside of the scope of Agency policy, or that the environmental aspects of products and services covered under such programs should not be considered in contract award decisions. Specific guidance on implementing both the mandatory and the non-mandatory programs is provided below.

23.1.1.4 Definitions [Reserved].

23.1.1.5 Policy.

As required by FAR Parts 7 and 11, EPA acquisition personnel shall consider the application of green purchasing in all acquisitions, beginning with the acquisition planning process. During the acquisition planning process, acquisition personnel should thoroughly evaluate the requirement and work with experts throughout the Agency, especially those managing Federal procurement preference programs such as OSW, OPPT, and OAR (Office of Air and Radiation) on potential green purchasing opportunities. Opportunities should be identified as early as possible in the planning phase so that obtaining environmental benefits does not impact the overall procurement schedule.

Agency program offices will ensure that environmental attributes of supplies and services are considered during acquisition planning (see Section 7 of the EPAAG) and that consideration for environmental procurement is documented in the Procurement Initiation Notice (PIN) package.

Agency acquisition personnel will include explicit recovered material and biobased material preference standards for EPA-designated items and USDA-designated items in appropriate solicitations and contract language, specifications, plans, and statements of work. The Agency shall not use a product or service specification that restricts a contractor's ability to provide green products and services to the maximum extent practicable. It is EPA's procurement policy to acquire designated products with recovered materials or biobased materials, consistent with the CPG and the BioPreferred programs, the FAR, and the procedures in this section (see 23.1.1.5.1.1 and 23.1.1.5.1.2). If the CPG and BioPreferred program guidelines for recommended recovered-content or biobased-content cannot be met, all designated items purchased shall be procured with the highest practicable level of recovered-content or biobased-content, consistent with performance, price, and availability considerations.

It is EPA policy to require contractors performing services on behalf of the Agency, to use products with recovered materials or biobased materials when designated items are required for contract performance.

Further, it is EPA policy to procure energy and water-using products that are ENERGY STAR-qualified, WaterSense labeled or that are designated by the FEMP as energy or water efficient, as well as to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products, and help foster markets for emerging and innovative technologies.

EPA acquisition personnel shall support the goals and objectives of the EPP Program, the WaterSense Program, the Alternative fuel vehicles/Alternative fuels Program, the SNAP for non-ozone depleting substances, and the Priority Chemicals Program. Absent regulatory procurement requirements, environmental considerations shall be a meaningful component of procurement decisions, and every effort should be made to procure items and services that meet the recommendations of the individual programs.

The EPA Green Purchasing Guide on the following page, which contains policy and procedures references and web tools for each green purchasing program, should be consulted to identify requirements and guidelines for greening a procurement in accordance with Federal and Agency acquisition guidance:

EPA Green Purchasing Guide

Program or Initiative	Type of Purchase Covered	Policy and Procedures Reference	Web Tools
CPG	Purchases of the following products, and contracts that will require use of the following products in performance: -Construction Products -Landscaping Products -Nonpaper Office Products -Paper and Paper Products -Park and Recreation Products -Transportation Products -Vehicular Products -Miscellaneous Products	-FAR 23.4 -EPAAG 23.1.1.5.1.1	http://www.epa.gov/epaoswer/non-hw/procure/products.htm
BioPreferred	Purchases of commercial or industrial products other than food, feed, or motor vehicle fuels, and contracts that will require use of these products	-FAR 23.4 -EPAAG 23.1.1.5.1.2	http://www.biopreferred.gov/ http://www.usda.gov/da/BiobasedProducts/index.html
EPACT ENERGY STAR and FEMP	Purchases of energy-consuming products, and contracts that will require energy-consuming products to be delivered, acquired or furnished by the contractor during contract performance, or are part of the contract specifications	-FAR 23.2 -EPAAG 23.1.1.5.1.3	http://www.energystar.gov/products http://www.quantityquotes.net/ http://www1.eere.energy.gov/femp/procurement/eeep_requirements.html

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EPP-EPEAT	Purchases of electronic products, such as desktops, notebooks (laptops), and monitors, contracts that will require electronic products to be delivered or furnished by the contractor during contract performance, and contracts for contractor operation of Government facilities	-FAR 23.7 -EPAAG 23.1.1.5.1.4	http://www.epeat.net/
EPP-EPA Green Meetings and Conferences	Purchases of off-site, commercial meeting and conference services, and contracts that will require a contractor to solicit quotes for and/or acquire off-site, commercial meeting and conference services on behalf of EPA	-EPAAR 1523.703-1 -EPAAG 23.1.1.5.1.4	www.epa.gov/oppt/greenmeetings
WaterSense	Purchase of water-efficient products and services, such as faucets, toilets, showerheads, urinals, landscape irrigation services, and new home design	EPAAG 23.1.1.5	http://www.epa.gov/watersense/pp/lists.htm
Alternative Fuel Vehicles/ Alternative Fuels	Purchase of vehicles and fuels	EPAAG 23.1.1.5	www.epa.gov/greenvehicles http://www.eere.energy.gov/afdc/index.html
SNAP	Purchase of items which contain, use, or are manufactured with ozone-depleting substances, such as refrigeration, air conditioning, fire suppression material, and adhesives	EPAAG 23.1.1.5	http://www.epa.gov/ozone/snap/
Priority Chemicals	Reduction of use and recycling of 31 Priority Chemicals	EPAAG 23.1.1.5	http://www.epa.gov/epaoswer/hazwaste/minimize/chemlist.htm

23.1.1.5.1 Procurement Preference - General

When requirements become known, Agency acquisition personnel are responsible for considering environmental aspects of the procurement (see FAR 7.105 (b)(16)). Formal acquisition plans must address environmental and energy conservation as well as innovative objectives associated with the acquisition. The plan should also address the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.

On lower dollar value procurements, when a formal acquisition plan is not required, Agency personnel must use mandatory environmentally-related Federal and Agency provisions, clauses and contract language in conducting the procurement, and document the file accordingly.

Agency personnel initiating an acquisition have the responsibility to indicate the preference for recovered materials, biobased materials, or other environmental attributes in the requirements for a contract. This preference shall be documented in the PIN when the Office of Acquisition Management (OAM) will be requested to place the contract. The program office is responsible for identifying designated-products that may be required for performance of service contracts. If a determination is made to procure designated items that do not contain recovered or biobased materials, or which do not meet the guideline recommendations, a written justification of the decision must be submitted with the PIN.

Program offices utilizing the contract placement services of another Agency, including GSA, are responsible for identifying environmental contract requirements to the servicing Agency. Also, program offices may include such requirements as terms and conditions in their Interagency Agreements (IAs):

- The GPP applies to interagency assisted acquisitions (IAAs) undertaken for the primary purpose of obtaining services or products from contractors. This GPP applies to both the Economy Act and non Economy Act transactions. Properly executed cooperation authority IAs (where contracting is incidental to the purpose of the transaction) are exempt.

Purchase card holders are responsible for ensuring that their purchases comply with the requirements of this GPP. Because many of the categories of products designated under the CPG, and expected to be designated under the BioPreferred Program, include low priced items (i.e., office supplies, transportation products, signage, awards and plaques, and office furniture), the Agency procures many designated items through use of purchase cards. Use of the Agency's mandatory Green Office Supply Blanket Purchase Agreement (BPA) will ensure compliance with the GPP, but not all designated items are available under the BPA. Purchase of designated items from sources other than the BPA requires cardholders to document their records to state that the item purchased met the minimum standards and to report all such purchases, on a quarterly basis, to OAM's Policy, Training, and Oversight Division (PTOD). Additional information on reporting requirements for procurements made with purchase cards may be found

on OAM's purchase card web site at intranet.epa.gov/oamintra. Click on 'Purchase Card' in the left hand column and then click on "Reports".

23.1.1.5.1.1 Procurement Preference for CPG Recovered-Content Products

The CPG Program specifies the purchase of designated products with the highest recovered material content level practicable. Recycling, through use of recovered materials in the manufacturing process, is a highly effective strategy for reducing all the categories of health risks and pollution resulting from virgin material extraction and processing. Extensive life-cycle analyses find overall emissions to all environmental media to be lower when manufacturers use recovered rather than virgin materials. Promoting waste prevention by purchasing recovered content items can slow the use of virgin material, as well as slow the rate at which the nation's landfills become filled and closed.

In accordance with FAR 23.4 and this section, a procurement preference shall be afforded to products with recovered-content when awarding contracts and orders requiring delivery or specifying the use of designated items. The CPG program publishes recommended recovered-content levels for all designated items in Recovered Materials Advisory Notices (RMANs). Accordingly, Agency personnel will give preference to products containing recovered materials when such products: 1) are available competitively within a reasonable time frame; 2) meet reasonable performance standards; and 3) are available at a reasonable price. When RMAN recommended levels of recovered-content levels cannot be met, purchasers shall buy products with the highest level of recovered-content practicable. Acquisition personnel are required to document their file to support buying decisions related to recovered-content items. Further, when a decision is made to purchase a designated item that does not contain recovered-content, documentation must be provided to the PTOD, for consolidated reporting to the Agency Environmental Executive (AEE).

COs and purchase card holders should take a best value approach when soliciting and evaluating offers, and when making a purchase decision. It is not necessary for offers of recovered-content items to meet or exceed offers proposing items made from virgin material, to be considered reasonable and eligible for award. For example, a lengthier delivery schedule or a higher price for a recovered-content product may be a reasonable offer under a best value concept. A 10% price differential for recovered-content items may be considered reasonable.

Paper (printing and writing) is a designated item in the CPG, with a recommended recovered-content level for Federal acquisition. However, EPA has established higher environmental standards in the procurement of office paper than that set forth in the CPG. EPA Headquarters' Offices shall procure office paper with 100% recovered-content with a minimum of 50% postconsumer fiber content. EPA's Facilities Operations Branch, in the Office of Administrative Services, may be contacted for specific information on EPA's green paper program.

Prior to initiating a PIN or making a purchase card buy; the requiring office shall determine whether the product is a designated item. This information is available at www.epa.gov/cpg/products.htm. Acquisition personnel should visit the website frequently, as

individual products or product groups, made with recovered-content, are periodically added to the CPG.

COs are required to insert FAR clause 52.223-4 in solicitations that require the delivery or specify the use of EPA-designated items, or insert FAR clause 52.223-17 in service or construction solicitations and contracts unless the contract will not involve the use of EPA-designated items. In addition, COs are required to insert FAR clause 52.223-9 in solicitations and contracts exceeding \$150,000 that are for or specify the use of EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

23.1.1.5.1.2 Procurement Preference for BioPreferred Program Biobased Items

The BioPreferred Program specifies the purchase of designated biobased products. The purchase and use of biobased products provide opportunities to: 1) increase domestic demand for many agricultural commodities used in producing biobased products; 2) generate new investment, job formation, and income in rural America by creating new markets for agricultural products; and, 3) benefit the environment by substituting biobased products for items derived from less environmentally sound materials and non-renewable resources.

USDA's BioPreferred program is relatively new. The list of designated biobased products is growing annually. The list may be found at www.usda.gov/procurement/programs/biobased/procurementtools.htm.

In accordance with FAR 23.4 and this section, Agency personnel are required to purchase products made from biobased materials when procuring items named to the list when such products: 1) are available competitively with a reasonable time frame; 2) meet reasonable performance standards; and 3) are available at a reasonable price.

Agency personnel must follow the procedures identified in FAR Subpart 23.4 and section 23.1.1.5.1.1, above, when procuring items named to the BioPreferred list.

COs are required to insert FAR clause 52.223-1 in solicitations that require the delivery or specify the use of USDA-designated items, or FAR clause 52.223-2 in service or construction solicitations and contracts unless the contract will not involve the use of USDA-designated items.

23.1.1.5.1.3 Procurement Preference Program for Energy Efficient Products

An energy efficient product is a product that meets EPA and DOE energy efficiency specifications for use of the ENERGY STAR label, or is in the upper 25 percent of efficiency for all similar products as designated by FEMP.

The Energy Policy Act (EPACT) of 2005 requires all Federal agencies, when acquiring energy-consuming products, to purchase either an ENERGY STAR qualified product or a FEMP designated product. EPACT and FAR Subpart 23.2 requires Federal agency personnel to

procure an ENERGY STAR or FEMP designated product except when it is found and documented in the contract file that: 1) an ENERGY STAR or FEMP designated product is not cost effective over the life of the product, taking energy cost savings into account; or 2) no ENERGY STAR qualified or FEMP designated product is reasonably available that meets functional requirements.

In addition, in accordance with FAR 23.2, acquisition personnel shall incorporate into the specifications, and into the factors for evaluation of offers, criteria for energy efficiency that are consistent with the criteria used for rating ENERGY STAR and FEMP designated products. This applies to all procurements involving energy-consuming products and systems, including guide specifications, project specifications and construction, renovation, and service contracts that include the provision of energy-consuming products and systems.

COs are required to refer to FAR Clause 52.223-15 when acquiring energy-consuming products listed in the ENERGY STAR Program and FEMP.

23.1.1.5.1.4 Procurement Preference Program for Environmentally Preferable Products and Services

Environmentally preferable products and services are those that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. For example, environmentally preferable products include viable alternatives to products that contain hazardous materials or toxic chemicals such as green cleaning products and services.

The Environmentally Preferable Purchasing Program (www.epa.gov/epp) serves as a clearinghouse of information and tools to facilitate the efforts of the Federal government to purchase environmentally preferable products and services. The primary purpose of the program is to help Federal agencies prevent waste and pollution by considering environmental impacts.

COs are required to refer to FAR clause 52.223-16 when purchasing electronic products such as a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items.

- (a) Electronic Products Environmental Assessment Tool (EPEAT)-registered electronic products. As required by Executive Orders 13423 and 13514, and FAR Subpart 23.7, agencies must ensure that they meet at least 95 percent of their annual acquisition requirements for electronic products covered by EPEAT with EPEAT-registered electronic products, unless there is no EPEAT standard for such products. EPEAT registered products are, by definition, ENERGY STAR qualified. EPEAT is a system to help purchasers in the public and private sectors evaluate, compare, and select desktop computers, notebooks, and monitors based on their environmental attributes. EPEAT also provides a clear and consistent set of performance criteria for the design of products, and provides an opportunity for manufacturers to secure market recognition for efforts to reduce the environmental impact of their products.

Agency employees must follow the procedures at FAR 23.7 and this section and purchase electronic products on the list at www.epeat.net, unless no EPEAT-registered products meet Agency requirements or the EPEAT-registered products will not be cost effective over the life of the product. Contracting officers and purchase cardholders must document the purchase file with the rationale for using one of these exceptions.

- (b) Green Meetings and Conferences. The EPA Acquisition Regulation Subpart 1523.703-1 requires Agency employees to consider environmental preferability in the purchase of off-site, commercial facilities for an EPA event, whether the off-site event is a meeting, conference, training session, or other purpose. Agency employees must use the solicitation provision at 1552.223-71 to request green meeting information from vendors when obtaining quotes for meeting and conference services, and that information must be considered in selection of the meeting venue. Statements of work that require a contractor to acquire meeting services on behalf of EPA must include language requiring the contractor to use our solicitation provision when asking venues for quotes.

23.1.1.5.2 Promotion

23.1.1.5.2.1 Education and Outreach

OAM, along with the OSW, OPPT, and other Agency program offices that play a role in green procurement, shall actively promote the Agency's preference for environmentally preferable products and services. Promotion shall cover all green procurement programs related to the purchase of supplies and services with recovered-content, biobased-content, energy efficiency and innovation, and other green attributes. Internally, our promotion program focuses on green procurement training for Agency personnel. Externally, our promotion program educates suppliers, contractors, and the general public about the Government's preference for green products and services, and emphasizes EPA's commitment to do business with companies that evidence environmental responsibility. The following activities shall be routinely accomplished. However, our promotion and outreach program will take advantage of other opportunities, as appropriate, including:

- Utilizing Agency Contractor Forums to publicize the GPP and to educate our vendor community.
- Participating in business outreach forums conducted by various Agency offices.
- Maximizing the potential of the Contracts Customer Relations Council in spreading the green procurement message.
- Presenting green procurement training to Agency personnel at conferences.
- Delivering mandatory green procurement training for acquisition personnel.
- Utilizing OAM's mini-training program to present topical, recurring green procurement training to procurement personnel.
- Providing informational materials and training to program and procurement offices, including purchase cardholders.
- Highlighting the GPP through OAM's procurement news publications.

- Maintaining various websites with specific information and procurement tools.

23.1.1.5.2.2 Program Coordination, Guidance, and Models

Executive Order 13423 requires EPA, along with DOE and USDA, to coordinate their efforts to designate or identify green products and to provide guidance to Federal agencies for purchasing these products. Historically, EPA has been a pioneer in developing new and innovative ideas in green procurement. The Agency's recent accomplishments regarding green procurement initiatives can be found at oamdev.epa.gov/?q=node/1. EPA, DOE, and USDA are required to create and maintain model green purchasing programs and to assist other agencies implementation efforts through outreach, promotion, guidance, and technical assistance.

Executive Order 13514 requires Federal agencies to leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products, and services. To continue with successful coordination of green purchasing programs, and to set an example for other Federal agencies, all Agency personnel should seek to identify requirements that pose opportunities for expanding environmental considerations in our contracts.

Offices participating in green procurement programs shall keep OAM's PTOD informed of their efforts. PTOD is responsible for monitoring Agency participation and for reporting activity.

23.1.1.5.3 Vendor Estimation, Certification, and Verification

Currently, vendor estimation, certification, and verification apply only to the Comprehensive Procurement Guidelines (CPG) Program, i.e., designated products with recovered-content. Estimation, certification, and verification procedures will likely be developed for designated biobased items at which time this section will be amended accordingly.

For contracts that are for, or specify the use of, designated recovered-content product(s), COs shall include FAR Clause 52.223-4, which states that, by signing their offer, the offeror is certifying that products delivered, or materials used in performance of services under the resultant contract, shall meet or exceed EPA's RMANs recommended content level of the product or contain the highest content practicable. In addition, if the contract price is expected to exceed \$150,000, COs shall include FAR clause 52.223-9, which requires contractors to submit, upon completion of the contract, an estimate of the percentage of the total recovered material used in contract performance. (If the program office indicates that the percentage of recovered materials used can be verified, Alternate 1 of the clause shall be used.) COs are required to collect estimation certificates. Ideally, collection will take place at time of final payment, but it must be collected prior to contract closeout. Contractors' estimation notifications shall be collected by the CO, and provided to PTOD for audit and reporting purposes. In accordance with 23.1.1.5.4, below, operating units' quality programs should monitor compliance with the requirement to obtain vendor certifications.

When contracts are for, or require the use of, designated items, COs are responsible for selecting the appropriate clauses from EPA's automated acquisition system. Program offices are

responsible for advising COs, via the PIN process, when requirements are for, or specify the use of, designated items. The program office is also responsible for identifying whether the percentage of recovered material can be verified.

In addition, it is critical that COs ensure that correct data is entered into the acquisition system in order for the Federal Procurement Data System - Next Generation (FPDS-NG) to accurately reflect Agency compliance and progress in green procurement. Data elements in FPDS-NG are used by Federal monitors to track EPA's compliance with the Federal programs listed in 23.1.2. Internally, PTOD will utilize the information in the acquisition system and FPDS-NG to oversee program compliance and to prepare the Agency's annual report to Congress.

23.1.1.5.4 Review and Monitoring

EPA's review and monitoring component of the GPP is five pronged:

- EPA's Quality Assessment Program requires OAM's operating divisions, and regional contracting offices to monitor compliance with the GPP as part of its oversight activities. OAM will also oversee the effectiveness of individual contracting operations in monitoring their own compliance, during regularly scheduled quality assessment plan oversight reviews.
- EPA's oversight program for the compliance review of the cadre of remote Simplified Acquisition Contracting Officers' (SACO) activities, in EPA laboratories, will include a review of compliance with the GPP;
- EPA's Agency-wide oversight plan for monitoring purchase card purchases will include review for compliance with the GPP;
- EPA's acquisition system and FPDS-NG will be utilized to monitor compliance with the GPP; and
- OAM's PTOD will collect data on purchases and report on compliance.

OAM operating divisions and regional contracting offices will include an element in their Quality Assessment Plan (QAP) which requires regular oversight of green procurement issues, including compliance with the GPP, collection of vendor certifications, and data integrity. OAM managers, to ensure that GPP requirements and guidelines are followed, shall perform periodic audits, consisting of file reviews. Corrective action is required in cases of non-compliance. Corrective action plans should be developed when systemic issues are discovered. In the performance of oversight reviews, OAM will ensure that all offices have adequate plans in place to monitor compliance, and that those plans are being followed. Oversight reviews should focus on the following:

- identification of CPG, BioPreferred, ENERGY STAR/FEMP, and EPP items in procurement requests;

- inclusion, when applicable, of environmental assessment or impact statements in the acquisition planning process;
- verification of suggested content standards;
- treatment of environmental considerations in the award process;
- proper selection of clauses; and
- collection of certificates and automated data integrity.

EPA's Agency-wide Purchase Card Oversight Program shall be employed as the review and monitoring tool to verify purchase cardholders' compliance with the GPP. The Purchase Card Oversight Program is decentralized, with individual offices empowered to conduct internal reviews. The program requires each AAship, Region or office to conduct its own review of each Approving Official's purchase card activity at least once every 24 months and conduct follow-up or corrective actions, as needed. The results of the reviews must be provided to OAM. To assist Program Offices and Regions, and to promote consistency among reviews, OAM has developed the Agency Purchase Card Oversight Tool Kit. The tool kit is available through the OAM intranet at purchasecard.epa.gov. Select the Oversight Toolkit option from the left column.

The acquisition system and FPDS-NG will be utilized to verify that contracts for designated CPG items are properly identified in the system, and to ensure that appropriate clauses are included in Agency contracts. On a quarterly basis, OAM will draw reports from the automated system, and audit the reports for irregularities. Findings, if any, will be reported to the Division Director or Regional Contracting Officer Supervisor for resolution.

Until such time as EPA's acquisition system provides automated reporting, OAM will manually collect, on a quarterly basis, information on purchases of all CPG items made via purchase card or purchase order. OAM will only collect information that is required to be reported to OFEE. Agency acquisition personnel who order CPG items (e.g. fleet managers) should maintain a purchase log and record all CPG purchases to facilitate the quarterly reporting.

The information collected from the quarterly reports, EPA's acquisition system, and QAP oversight reviews will be used to fulfill Agency reporting requirements, and to conduct trend analysis on purchases. The data will assist in evaluating the Agency's compliance with green requirements.

CHAPTER 25 – FOREIGN ACQUISITION

Section 25.1 – Buy American-Supplies

Subsection 25.1.1 – Use of Buy American-Supplies Exceptions (November 2017)

25.1.1.1 Purpose.

The purpose of this subsection is to provide policy and guidance on the use of exceptions to the Buy American Act (BAA). This EPAAG subsection should be read and interpreted consistent with FAR Part 25.

25.1.1.2 Background.

On April 18, 2017, the President signed Executive Order (E.O.) 13788, Buy American and Hire American (the Order), to ensure that Federal procurement and Federal financial assistance awards maximize the use of goods, products, and materials produced in the United States, including iron, steel, and manufactured goods. Buy American Laws provide important benefits to the Nation.

[FAR Part 25](#) requires preference for the purchase or acquisition of goods, products, or materials produced in the United States for all requirements that are valued more than the micro-purchase threshold and are for use within the United States, unless an Exception or Trade Agreement applies. A foreign end product may be acquired if one of the following Exceptions applies:

- Public Interest
- Nonavailability (See list of items at [FAR 25.104](#))
- Unreasonable Cost
- Resale
- Information Technology that is a commercial item

Additional information on Exceptions can be found at [FAR 25.103](#).

Exceptions should not be confused with Waivers. Waivers pertain to the trade agreements the President has authorized and they are listed under [FAR Subpart 25.4 Trade Agreements](#). The Trade Agreements Act of 1979 authorizes the President to waive the BAA under certain circumstances. (See [FAR 25.003 Definitions](#) for more information.)

25.1.1.3 Authority/Applicability.

This policy is issued in accordance with FAR 1.301(a), 1.401(f), and EPA Delegations Manual Chapter 1-2 and applies to all requirements that exceed the micro-purchase threshold and are for use within the United States.

25.1.1.4 Definitions.

The following definitions may be abbreviated with the full definition found at the FAR reference as noted.

Designated country – any country that is covered by a World Trade Organization Government Procurement Agreement (WTO GPA), Free Trade Agreement (FTA), or designated as a least developed country or Caribbean Basin country. ([FAR 25.003](#))

Domestic end product – an end product produced (mined, manufactured or unmanufactured) in the U.S., if the costs of its components (U.S. or from the Nonavailability list) exceeds 50% of the total component cost. ([FAR 25.003](#))

Eligible product – a foreign end product, construction material, or service that is not subject to discriminatory treatment in an acquisition because the offering country is a designated country. ([FAR 25.003](#))

End product – goods or materials acquired for public use. ([FAR 25.003](#))

Exception – a foreign end product may be acquired without regard to the restrictions of the Buy American statute, if one of the following applies: Public Interest, Nonavailability, (See list of items at FAR 25.104), Unreasonable Cost, Resale, or Information Technology that is a commercial item. (See [FAR 25.103](#)).

Waiver – The President has the authority to waive the Buy American statute for eligible products from countries that have signed an international trade agreement or that meet certain other criteria (See [FAR 25.402](#)).

25.1.1.5 Policy.

Exceptions to the Buy American Act should be used sparingly and must be documented in the contract file as to the exception used and any back up supporting the Contracting Officer's (CO) decision. "Public Interest" and "Resale" exceptions should not be used by EPA COs. The "Nonavailability" exception requires a written determination to be processed that must be signed by the head of the contracting activity as delegated to the Service Center Manager (SCM). While "Unreasonable Cost" does not require a signed determination, the rationale for use of this exception requires careful consideration in the evaluation/source selection and be documented carefully in the file. (See FAR Subpart 25.5.)

The following subparagraphs discuss specific FAR 25 exceptions.

25.1.1.5.1 Public Interest

In accordance with FAR 25.103(a) the head of the agency may make a determination that domestic preference would be inconsistent with the public interest. The EPA currently has no public interest exceptions.

25.1.1.5.2 Nonavailability

FAR 25.103(b)(1) notes that a class determination for nonavailability has been made for the items listed at [FAR 25.104](#). However, this does not necessarily mean there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand. Therefore, market research must be conducted to assess whether there is sufficient quantity and quality available domestically to meet the requirements of the solicitation.

After conducting market research and if no domestic source is found to meet the requirement in sufficient quantity and/or quality, a written determination must be processed unless all of the following conditions are met per FAR 25.103(b)(3):

- (i) The acquisition was conducted through use of full and open competition,
- (ii) The acquisition was synopsized in accordance with [5.201](#), and
- (iii) No offer for a domestic end product was received.

If all three of these conditions are not met, a written determination is required, and a Nonavailability Exception Determination to the Buy American Act (EPAAG 25.1.1-Attachment A) must be processed. A copy of the signed determination must be included in the contract and EAS file. A copy of the signed determination must also be emailed to OAM-AcquisitionPolicy@epa.gov with a subject line of: BAA Nonavailability Exception Determination.

25.1.1.5.3 Unreasonable Cost

The CO may determine that the cost of a domestic end product would be unreasonable. This determination should be made in accordance with FAR [25.105-Determining reasonableness of cost](#) and FAR [Subpart 25.5-Evaluating Foreign Offers—Supply Contracts](#) and should be documented in the contract file. The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers, in accordance with FAR Subpart 25.105.

25.1.1.5.4 Resale

Foreign end products may be purchased specifically for commissary resale. EPA does not purchase items for commissary resale. Therefore, this exception should not be used by EPA COs.

25.1.1.5.5 Information Technology (IT) that is a commercial item

Foreign IT end products may be purchased when they are commercial items. “Commercial Item” is defined at [FAR 2.101](#).

25.1.1.6 FPDS-NG Reporting.

It is very important that all procurements are coded correctly in FPDS-NG. This is especially important for those using exception codes to the Buy American Act. If a contract contains multiple items, the FPDS-NG code for the predominant item (in quantity or dollar value) should be used. The choice and rationale should be noted in the contract file.

The FPDS-NG codes available for Data Dictionary Element 9H “Place of Manufacture” and use are as follows:

Code	Description	Use by EPA	FAR Reference
A	Performed or manufactured in U.S., but services performed by a foreign concern or more than 50% foreign content	These 2 codes are <u>not valid options</u> , unless the signature date on the contract is before 2007.	
B	Performed or manufactured outside U.S.		
C	Not a manufactured end product	Use this code if the purchase does not meet the definition of a manufactured end product (defined by FAR 2.101). A manufactured end product means any end product in product and service codes (PSC) 1000-9999, unless an exception noted in the definition applies.	FAR 2.101; 25.003
D	Mfg. in U.S.	Use this code for domestic products purchased.	
E	Mfg. outside U.S. - Use outside the U.S.	Use this code <u>only</u> if the product is foreign and <u>used</u> outside the U.S.	FAR 25.100
F	Mfg. outside U.S. - Resale	<u>Do not use.</u> EPA does not purchase commissary items.	FAR 25.103(d)
G	Mfg. outside U.S. – Trade Agreements	Use this code if the product is foreign, but allowed by a Trade Agreement	FAR 25.402(a)(1)
H	Mfg. outside U.S. – Commercial information technology	Use this code for foreign products that are commercial IT.	FAR 25.103(e)
I	Mf. Outside U.S. – Public interest determination	<u>Do not use.</u> EPA does not have any public interest determinations at this time.	FAR 25.103(a)

J	Mfg. outside U.S. – Domestic non-availability	Use this code if a domestic product is not available.	FAR 25.103(b);
K	Mfg. outside U.S. – Unreasonable cost	Use this code if the cost of the domestic product has been determined unreasonable.	FAR 25.103(c); 25.105; 25.5;
L	Mfg. outside U.S. – Qualifying country (DOD only)	<u>Do not use.</u> DOD use only.	

Nonavailability Exception Determination to the Buy American Act

The Contracting Officer (CO) has determined that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Solicitation/Reference Number: _____

Estimated value of this requirement: \$ _____

Description of Item(s) to be purchased:

--

Describe the market research conducted and the results:

--

This determination must also be documented in the contract file and a copy of the approved determination must be sent by the CO as an email attachment to: OAM-AcquisitionPolicy@epa.gov with the Subject: BAA Nonavailability Exception Determination.

This Nonavailability Exception Determination request is submitted by:

_____ Date: _____
CO/SACO

Concur:

_____ Date: _____
Manager/Supervisor/AO

In accordance with EPAAG 1.6.1-A Review and Approvals, the Service Center Manager (SCM) is required to review and sign a written determination that is governed by FAR 25.103(b)(2)(i).

This determination request is:

☐ Approved ☐ Denied

_____ Date: _____
Service Center Manager

Comments:

CHAPTER 31 – CONTRACT COST PRINCIPLES AND PROCEDURES

Section 31.2 – Contracts with Commercial Organizations

Subsection 31.2.1 – Charging Government Contracts for Contractor Provided Property (May 2003)

This subsection was previously Unit 31.2 of the Acquisition Handbook.

31.2.1.1 Purpose.

This section provides guidance to contracting personnel on the various methods contractors may use to charge Government contracts for the use of contractor-owned or contractor-provided property. It includes a discussion of depreciation, standard usage rates, fixed usage rates, and lease versus purchase analysis.

31.2.1.2 Background.

In May of 1996, the Office of Acquisition Management (OAM) issued Procurement Policy Notice (PPN) 96-03 which set forth the Agency's Federal Acquisition Regulation (FAR) compliant property policy that contractors should provide the property necessary for contract performance. As expected with any change, some of the actions taken to further property compliance have raised new issues. It is important to remember that the property policy does not stand alone; Contractors must now provide property, but that requirement does not negate other contract terms or contractor responsibilities. The contractor is still obligated to perform and is responsible for doing so at a reasonable cost. A contractor must provide the property necessary for contract performance, and must do so in accordance with all contract terms.

This section was originally issued as a Procurement Policy Notice No. 98-04 from Betty L. Bailey, Director of the Office of Acquisition Management to OAM Division Directors, Regional Contracting Officer Supervisors, and OGC Contracts Practice Group on September 28, 1998.

31.2.1.3 Authority/Applicability.

FAR Part 31 addresses cost principles such as depreciation. FAR Part 45 governs the practices of contractor provided property.

31.2.1.4 Definitions [Reserved].

31.2.1.5 Policy.

Contractor-purchased property becomes Government property when its full acquisition cost is charged to a Government contract in one accounting period and the Government reimburses that cost. When this occurs, title to the property passes from the contractor to the Government. Under FAR Part 45, this is not a permissible practice except in rare circumstances, which are set forth at FAR 45.302-1.

Unless provision of Government property is permitted by the exceptions to FAR 45.302-1 or the EPA deviation, contractors' charging of full acquisition cost in one accounting period is not an acceptable method of charging the Government for property. However, the Government fully intends to reimburse contractors for the use of their property under Government contracts. The three primary

methods of doing so are through payment of appropriate depreciation charges, usage charges, and reimbursement of rental costs.

Contracting officers should not direct contractors to account for their property and its associated costs in a specific manner. Each of the methods are available and contractors should be making accounting decisions in accordance with their established practices and business objectives. A depreciation charge is preferred by the Government for its simplicity and accuracy, and COs may encourage their contractors in this practice. Nonetheless, the final decision on how to charge is the contractor's. The COs responsibility is to ensure that the resultant charge is reasonable and allocable to their contract.

31.2.1.5.1 Depreciation

Most contractors will acquire property for performance under a Government contract in the same manner in which they acquire all company-owned equipment. They will capitalize the purchase in accordance with their established capitalization procedure, and include the depreciation in the appropriate pool for each applicable accounting period. This method will result in charges to Government contracts that are fair and reasonable. It is also permissible for contractors to charge depreciation direct to a contract if the property is used exclusively on that contract, and such cost treatment is consistent across all work. Reimbursement of directly charged depreciation does not transfer title to the Government, and such costs may be paid under an Other Direct Cost (ODC) line item.

Depreciation is a charge to a current accounting period which distributes the cost of equipment, less estimated residual value, over the estimated useful life of the equipment in a systematic and logical manner. It is important to understand what is meant by useful life of equipment, not only in determining the reasonableness of depreciation costs, but in evaluating all methods of charging for property usage. Useful life of equipment does not necessarily reflect its physical life. A common example is computer equipment. With rapidly changing technology in that field, an item's useful life may well be shorter than its physical life. Further, useful life is not derived from the contract's period of performance. Although the two may coincidentally match, a claim that the equipment is not useful to the contractor after the completion of the contract does not influence the item's useful life for accounting purposes. Useful life is established by the contractor at time of acquisition, based on experience, industry standards, Internal Revenue Service (IRS) guidelines, etc. There is no official source for definitive useful life information. The estimate used must be reasonable, and the contractor must be able to support the figure.

FAR 31.205-11 provides an in-depth discussion on depreciation, and sets forth the requirements for contractor's accounting practices in this area. Depreciation, in most cases, will be allocated to the contract and to other work as an indirect cost. Hence, the invoicing and payment of depreciation costs will be invisible to the CO during contract performance. The charges contained in the contractor's indirect pools will be reviewed periodically throughout the contract, and again at time of final audit. If the contractor has an assigned Financial Administrative Contracting Officer (FACO), the FACO will consider depreciation costs in the establishment of billing and final indirect rates. If the CO is responsible for rate determination, the cognizant audit office is available to provide field pricing support to assist the CO in negotiation.

Depreciation Example:

Machine acquisition cost	\$10,500	
Salvage/residual value	\$ 500	
Amount to be depreciated	\$10,000	(Acquisition cost - residual value amount to be depreciated)
Estimated useful life in years	5	
Annual depreciation charge	\$ 2,000	(Amount to be depreciated estimated useful life in years = annual depreciation charge)

NOTES: 1. In this example, an item acquired at the start of the fifth year of a five year contract would have \$2,000 allocable to the contract. 2. Example illustrates simple/straight line depreciation where the amount to be depreciated is divided equally over the item's useful life. Other depreciation methods may be acceptable. However, a contractor may not depreciate any more for cost purposes than they do for tax purposes, and accelerated methods of depreciation are unacceptable. 3. Example utilizes useful life for allocation purposes. Depreciation may also be based on output if measurable (i.e., a machine's useful life may be defined as 80,000 revolutions). 4. \$2,000 annual depreciation charge may be allocated over contractor's entire business for the period if equipment has broad use on multiple contracts. Conversely, it may be allocated entirely to one contract when equipment is dedicated and contractor's accounting system permits the direct charging of depreciation.

31.2.1.5.2 Non-Depreciable Property

Most EPA contractors have established their capitalization thresholds between \$ 1,000 and \$3,000, although the Cost Accounting Standards (CAS) permit capitalization thresholds up to \$5,000. Therefore, there are many property acquisitions, both facilities and material, which may fall below a contractor's established capitalization threshold, and which may be termed non-depreciable property. Despite the fact that a contractor's normal treatment of such costs may be to charge (expense) them direct to a contract in the current accounting period, such treatment would violate federal property policy (i.e., title would pass to the Government). Inasmuch as CAS permits the charging of these items indirect, contractors are encouraged to adopt this practice to avoid both cost and property conflicts. In the case of material only, COs have the option to permit direct billing and reimbursement by making the determination required by FAR 45.303-1 that provision of Government material is in the best interest of the Government. Bear in mind that the material then becomes Government property and is subject to all the tracking and recordkeeping requirements of Government property. Therefore, even though the provision of Government material is subject to a lesser justification than the provision of Government facilities, contractors should, nonetheless, be encouraged to charge material indirectly to avoid the unnecessary administrative effort and expense associated with Government ownership.

31.2.1.5.3 Usage Rates

(a) Provisional Usage Rates (adjusted to actual). Many EPA contractors have elected to create service centers and develop usage rates to charge the Government for use of their equipment.

This method, if calculated and adjusted accurately, will result in EPA contracts receiving a fair and reasonable charge for use of contractor-owned equipment. A service center is a collection point for cost and usage information for one or more items of property. The information collected is used to derive a usage rate, based on actual costs and actual usage experienced by the contractor. It is a common misconception that provisional usage rates are arbitrary "rental" fees which the contractor charges for Government use of property. A provisional usage rate is not arbitrary and it is only

reasonable if it is based on actual cost, and periodically adjusted to actual costs incurred.

Because EPA contractors have not historically purchased much equipment, provisional billing rates may initially be proposed and agreed upon based on estimated costs and estimated usage. Put simply, the provisional usage rate will be the estimated usage costs divided by the estimated usage. In deriving estimated (or later actual) costs, one should include service, maintenance, shipping and all other associated costs not elsewhere recovered. Estimated usage should include all other possible applications in the contractor's operation. One of the inherent drawbacks to usage rates is that they provide no incentive to the contractor to achieve maximum utilization of the equipment. The contractor is reimbursed based on actual usage, whether it be high or low. Lower usage will actually result in quicker recovery of the contractor's acquisition cost, because the instant contract will be liable for both use and equipment idle time. It is to the Government's benefit that the equipment be utilized to its maximum extent and it becomes an additional CO responsibility to facilitate and to provide incentives for the broad utilization of equipment when a contractor charges for equipment use in this manner.

Because usage rates are initially based on estimates and/or historical actual data, they must be periodically adjusted to actual experience. Periodically is at least annually, but semiannually is recommended especially in the initial years of the rate. Material variances between the provisional rate and the actual experienced rate are adjusted at the contract level. An immaterial variance is generally treated as an adjustment to the overhead accounts. Billing rates should be adjusted accordingly if the variance is expected to continue.

The CO is responsible for determining and adjusting billing rates will depend on whether the contractor establishes the service centers on a contract-by-contract basis, or whether the rates will be applicable to all contracts. In the first circumstance, the CO is responsible for review, agreement, and periodic adjustment of usage rates, as the changes will affect only one contract. Under the second circumstance, multiple contracts will be effected. Therefore, the FACO is responsible for negotiation of the provisional usage rates, in addition to all other cross-contract rates. Regardless of ultimate responsibility, the Financial Analysis and Oversight Service Center (FAOSC) will provide advice and assistance to COs in evaluating usage rates.

As is evident, the contractor's creation of service centers and the Government's agreement to pay provisional usage rates, involves a great deal of administrative effort by both parties. Frequently, adjustments to actuals and establishment of revised billing rates do not occur on schedule and may lead to inappropriate costs being reimbursed throughout contract performance. And, as previously mentioned, usage rates discourage full utilization of property. For these reasons, provisional usage rates, while an acceptable accounting and billing practice, are not favored by the Government. Likewise, usage rates for individual contracts are less desirable than usage rates applicable to all contracts due to the compounded administrative effort.

While usage rates are administratively cumbersome for contractors as well as for the Government, their favor with contractors may stem from the contractor's perception that their competitive position is improved by establishing usage rates rather than including equipment costs in their indirect pools. Placement COs can dispel this notion by assuring that contract award decisions are based on all prospective costs. Proposal instructions should specify that contractors disclose their method for charging equipment. If usage rates are proposed, contractor accounting systems should be scrutinized to assure adequacy for collecting equipment cost and usage information. As discussed, administrative COs can reduce any advantage of usage rates by maximizing equipment

usage and assuring that usage rates are adjusted to actuals on a timely basis.

Although by definition a standard usage rate is an indirect charge, it may be invoiced and paid under an ODC allocation on the contract.

Provisional Usage Rate Example:

Development of Provisional Rate for Computer Service Center

Estimated annual costs	
Depreciation	\$100,000
Utilities	\$20,000
Maintenance	\$50,000
Repairs	\$30,000
Estimated annual costs	\$200,000
Estimated usage hours *	100,000
Estimated (standard) rate	\$2.00/hour

NOTES:

1.*Usage for service centers may be measured in any equitable manner. It will vary depending on type of service. Examples of bases include dollars, central processing units (CPUS.), floor space, personnel, etc. 2). As in the example, estimated usage hours may exceed one year (8760 hours) as multiple pieces of equipment are generally included in a single pool.

Contract billed for 10,000 hours at \$2.00/hour = \$20,000
Actual experience at year-end (compare to estimates above)

Costs	\$350,000
Usage	110,000 hours
Actual rate	\$3.18/hour
Rate variance	(\$2.00 - \$3.18) \$1.18

Contract under-billed ($\$1.18 \times 10,000 = \$11,800$)

Conclusions

- Adjust all contracts billed because variance is material/significant
- Rate should be adjusted for following period

(b) Fixed Rates. A fixed rate is negotiated by the CO and is fixed for the length of contract or other established time period. Some contractors may have enough accurate historical data on equipment cost and usage to propose fixed rates. However, such cases will be rare. Lack of accurate historical data and variances in usage tend to make fixed rates very inaccurate. They may offer little assurance

to either the Government or the contractor that fair payment is made for use of equipment. Despite the administrative ease inherent in fixed rates, their use is discouraged unless accuracy can be assured.

31.2.1.5.4 Contractor Leasing

One of the many responses to the property policy has been an increase in the amount of contractor leased property under cost-reimbursable contracts. In some cases, leasing is an appropriate response. Contractor-leased property is not Government property and is, therefore, outside of the restrictions of FAR Part 45 and EPAAG Chapter 45. But, as a general rule, leasing of equipment for long-term use by the contractor is not a cost-efficient method of property acquisition and will likely result in an unreasonable cost which should not be reimbursed under the contract. While it is the contractor's responsibility to incur and bill only reasonable costs, the CO has the responsibility for monitoring contract costs during performance. Part of this monitoring must include decisions on the reasonableness of lease costs, and consequently, a review of the contractor's lease versus purchase analysis.

The most important single factor determining the appropriateness of a lease is the period of time for which the equipment is needed. The shorter the time period, the more likely that a lease will result in a reasonable contract charge. The longer an item will be needed, the more likely that a lease will result in an unreasonable cost. Contractors should perform a lease versus purchase analysis to assist them in their leasing decisions. This should be part of any company's standard operating practice, whether or not they are performing under a Government contract. The degree of analysis will vary dependent upon the circumstances. Contractors may NOT automatically or routinely lease property, only because they do not want to own the property. The decision to lease must be a sound business decision and must result in a reasonable cost. Further, an analysis of various leasing arrangements must be accomplished if analysis finds leasing to be a reasonable option. A lease must be the reasonable method to acquire the property in order for the lease charges to be eligible for reimbursement under the contract, and the particular lease chosen must be the best from among the various options.

Because billing of lease costs permits a contractor to recover the full cost of property acquisition under a Government contract, some contractors will be naturally inclined to favor this method. That inclination is somewhat balanced by the fact that leasing does not provide them with a lasting capital asset. A contractor interested in growth and future competitiveness will also have a desire to acquire equipment and have at least some part of its cost reimbursed through use on Government contracts. It is important to bear in mind an individual contractor's motivations when reviewing their lease proposals.

Ideally, contractors will seek the concurrence of the CO prior to entering into leasing agreements for which they expect direct reimbursement. Advance notification and consent to subcontract are mandatory requirements under FAR 52.244-2. Contractors not complying may need to be reminded of this requirement. Specifically, FAR 52.244-2(a)(4) addresses subcontracting for any item of facilities, regardless of dollar value. Note also that the provisions of subparagraph (4) require CO approval even if the contractor has an approved purchasing system. Notwithstanding the notification and consent requirement, the CO should evaluate the reasonableness of a lease cost at any time the information presents itself, even if that is not until the charge appears on an invoice.

A review of the contractor's lease versus purchase decision may take the form of a review of the contractor's analysis or an independent analysis. Review of the contractor analysis is recommended as usually sufficient. In some cases, it may be necessary to develop a Government "should-cost" position

utilizing independent data.

A proper lease versus purchase analysis must consider both various lease and purchase options and must demonstrate price competition. It is easy to fall into the trap of comparing apples and oranges when performing lease versus purchase analysis. The specifics of the lease and the purchase options must be normalized to permit comparison. The analysis must compare the depreciation cost or anticipated usage costs that would be allocated to the contract if the item were purchased against the lease costs for the same period. A common mistake is to compare acquisition cost against lease cost. Another common mistake is to use the lease length rather than useful life in computing the depreciation cost. Lease costs should be exclusive of maintenance, utilities, taxes, and insurance costs, because such costs are generally not included in the depreciation calculation. If a contractor proposes a lease with ancillary costs included, then such costs should also be included in the depreciation calculation for comparison purposes. Most reviews of lease costs will not require in-depth analysis on the part of the contractor or the CO. When a proper comparison is done, an obvious conclusion can usually be drawn on the basis of the bottom line numbers, and the CO will be confident in making a decision regarding the reasonableness of a lease. But, there will be occasions when lease vs. purchase calls are close. In such cases, COs may request assistance from their cost analysts in performing an in-depth review of the contractor's proposal. It may be the case that **either** a lease or purchase will result in a reasonable charge to the contract, in which case the CO may approve either. Remember that it is not necessary for a lease or purchase to be the lowest cost, although that generally will be the case. Further, even though a lease, over time, may approximate a purchase price, the lease cost is not automatically an unreasonable cost. The test is for cost reasonableness.

If a lease versus purchase analysis reveals that a lease is an appropriate means for the contractor to acquire property, then a comparison of various leases is the next step. Frequently, contractors request authorization to enter into leases with an option, at the end of the lease, to purchase the item for a nominal amount. Leases with such terms are generally not beneficial to the Government, and are discouraged. Lease-to-buy agreements amount to a form of financing, and the Government should not finance the contractor's purchase. Generally, monthly payments under a capital lease include a premium, payment of which results in the earning of "Purchase credits". While the Government does not own the leased property, because it reimburses the rental fee, it owns the rights to any resulting purchase credits. Consequently, the contractor cannot purchase the item at the end of the lease, because they do not own the purchase credits. The purchase credits belong to EPA, and EPA (in accordance with contract property policy) does not want to acquire the property at the end of the lease. COs should not approve leases which include a premium in the lease rate for an option to buy at contract completion. Generally, EPA will be better served by the contractor entering into a standard lease over a lease-to-buy, provided analysis reveals that the most reasonable acquisition method is for the contractor to lease.

Lease Versus Purchase Example #1:

Contract term	5 years		
Lease term	6 months		
Purchase		Lease	
Acquisition price		\$100,000	Monthly rental rates

	\$3,000
Residual value (5 years)	\$10,000
Depreciable amount	\$90,000
Anticipated useful life	5 years
Annual depreciation charge	\$18,000
Monthly depreciation charge	\$1,500
Cost to Government (appropriate contract charges)	

Total (6 x \$1,500)	\$ 9,000	Total (6 x \$3,000)	\$18,000
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NOTES: 1. Although the lease cost in the above example is twice the cost of depreciation if contractor were to purchase the item, the CO may still find \$18,000 to be a reasonable contract cost due to the short time period the item is required. Contractor's ability to utilize the item in the future should be considered when making this decision. 2. Assume monthly rental rate to be a competitive rate and exclusive of occupancy costs.

Lease Versus Purchase Analysis Example #2:

Contract term	5 years		
Lease term	2 years		
Purchase		Lease	
Acquisition price		\$8,000	Monthly rental rate\$400.
Residual value (5 years)		\$200	
Depreciable amount		\$7,800	
Anticipated useful life	3 years		
Annual depreciation charge		\$2,600	
Monthly depreciation charge		\$ 217	

Cost to Government (appropriate contract charges)

Total (24 x \$217)	\$5,208	Total (24 X \$400)	\$9,600
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NOTES: 1. Example illustrates analysis of computer lease versus purchase analysis. Contractor purchase of the computer is indicated. Lease costs would be unreasonable given that the computer has continuing utility to the contractor after contract completion, and the use term under the contract is fully 2/3 of its useful life. 2. Assume monthly rental rate is competitive and exclusive of occupancy costs.

31.2.1.5.5 Summary

As with all contract costs, Contracting Officers (COs) should be able to place reliance in the contractor's accounting and purchasing systems to ensure that their contract is being charged appropriately. To the extent that a contractor has approved systems, the review of each individual property acquisition may be lessened accordingly. The costs incurred by a contractor in the acquisition of property are subject to the same rules and restrictions as all other contract costs. Nonetheless, COs and Project Officers have a continuing responsibility, beyond the decision whether or not to provide Government property, to ensure that contractors provide their property in a manner that results in reasonable contract costs. Cost and pricing experts are available to assist the CO in evaluation of any cost issues resulting from the contractor's acquisition of property. Additionally, contracting personnel

are encouraged to consult the Contract Pricing Reference Guide for advice and assistance on all cost and pricing matters. The five volume reference guide was recently published jointly by the Air Force Institute for Technology (AFIT) and the Federal Acquisition Institute (FAI), and is intended for use by all federal agencies. The guide is available on the Internet at www.gsa.gov/staff/v/volumes.htm

CHAPTER 32 – CONTRACT FINANCING

Section 32.6 – Contract Debts

Subsection 32.6.1 - Processing Contractor Refunds (Apr 2020)

This subsection was previously Section 32.4 of the Contracts Management Manual.

32.6.1.1 Purpose.

The purpose of this subsection is to enhance controls over, and timeliness in, the collection of monies from EPA contractors.

32.6.1.2 Background.

This section was originally issued as Procurement Policy Notice (PPN) 99-01 dated February 4, 1999, from Betty L. Bailey, Director of the Office of Acquisition Management (OAM) (Currently Office of Acquisition Solutions (OAS)) to Division Directors, Regional Contracting Officer Supervisors, and Howard Corcoran (Office of General Counsel).

32.6.1.3 Authority/Applicability.

32.6.1.4 Definitions [Reserved].

32.6.1.5 Policy.

32.6.1.5.1 Procedures for Processing Contract Refunds

Once an amount to be refunded from the contractor to the Government is established, the Contracting Officer shall take the following actions:

- (a) Issue a letter to the contractor (Appendix 32.6.1-A is a sample format). The letter must include the following information:
 - (1) Notification of dollar amount owed to EPA,
 - (2) Instructions for remittance in one of two ways:
 - Either through a financial institution via the National Automated Clearing House (ACH) credit payment instructions (i.e., electronic funds transfer (EFTH)), or
 - By mailing a check to RTP-FC (Finance Center)'s Mellon Bank "lock box" account,
 - (3) Instructions for submission of contract closing documentation. Closing documentation to be provided to the contractor includes EPA Forms 1900-5, Contractor's Assignment

of Refunds, Rebates and Credits, and 1900-6, Contractor's

Release (copies of these forms are available at
https://usepa.sharepoint.com/sites/OARM_Community/oam.kms/Forms/Forms/AllItems.aspx

- (4) Statement of interest assessment if the contractor does not pay the full amount due within 30 days of the date of the Contracting Officer's letter. Also, a notice of late handling and penalty charges in case of delinquency;
- (5) A date on the letter consistent with the certified mail transmittal date.
- (b) Complete the "Accounts Receivable Request" form. This form is available through EPA's Intranet at
https://usepa.sharepoint.com/sites/OARM_Community/oam.kms/Forms/Forms/AllItems.aspx
- (c) Submit a copy of the Contracting Officer's letter and the "Accounts Receivable Request" form to RTP-FC (Finance Center) within 24 hours after issuing the letter to the contractor.
- (d) Promptly report all financial recovery actions to your Management Audit Tracking System (MATs) coordinator.
- (e) Explanatory Note on Preferred Payment Method

EFT is the preferred method of payment which should be pursued to the maximum extent practicable. Before sending this letter, the Contracting Officer should ascertain the feasibility of EFT payment by the contractor.

The Debt Collection Improvement Act of 1996 requires electronic funds transfer for Federal Government payments. The National Automated Clearing House is a non-profit trade association responsible for promulgating standard rules and operating guidance for electronic payments.

For additional guidance on processing contract refunds refer to The Office of Chief Financial Officer (OCFO) How to Make a Payment to EPA at (<https://www.epa.gov/financial/makepayment>).

APPENDIX 32.6.1-A
SAMPLE FORMAT FOR CONTRACTING OFFICER’S REQUEST
FOR PAYMENT

Date

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CONTRACTOR NAME
 CONTRACTOR ADDRESS

SUBJECT: Contracting Officer's Request for Payment, Contract No.
 68-XX-XXXX

Dear XXX:

In accordance with the provisions of the above referenced contract a final reconciliation of the total, cumulative costs, was performed. Please submit a final credit voucher and check in the amount of \$4,404.28 within 30 days of the date of this letter. The total cumulative costs deemed acceptable are as follows:

Total Amount	\$169,198.87 (1)
Claimed Amount Paid to Contractor	<u>\$(173,603.15) (2)</u>
BALANCE DUE EPA	\$ (4,404.28)

[CONTRACTING OFFICER SHOULD ALSO ADDRESS CONTRACTOR CLAIMED COSTS DETERMINED TO BE UNALLOWABLE.1

NOTES:

- (1) Amount claimed per your cumulative claim dated XXX.
- (2) Per voucher payment records in the EPA-RTP Financial Management Center.

Please forward the amount due EPA via:

[CONTRACTING OFFICER CHOOSE APPROPRIATE PAYMENT METHOD ~ EITHER ACH CREDIT OR CHECK - SEE THE PPN UNDER REQUIRED ACTIONS, 1.a.(2), FOR GUIDANCE.]

ACH Credit Payment Method:

ABA# 051036706 Account # 349007
 Voucher Number: XXX Contract
 Number: XXX EPA ACH Contact

(919) 541-3505

and

A copy of the final credit voucher to RTP-FC (Finance Center) (ATTN.: MD-32).

OR

Check Payment Method

Send original check (payable to U.S. Environmental Protection Agency) to:

U.S. Environmental Protection Agency
P.O. Box 360945M Pittsburgh, PA
15251

and

A copy of the final credit voucher to RTP-FC (Finance Center) (ATTN.: MD-32).

2. Please also forward the following contract closing documentation to the Contracting Officer:

a. A copy of the check, when the check payment method is used. When the ACH method is used, send a copy of the evidence provided by the bank.

b. Two fully executed originals (original signature(s) and corporate seal, if applicable) of the following:

- (1) final credit voucher;
- (2) Completed EPA Form 1900-5, "Assignment of Refunds, Rebates and Credits", and
- (3) Completed EPA Form 1900-6, "Contractor's Release".

Blank forms 1900-5 and 1900-6 are included for your convenience (Attachment). Contracts

This letter represents EPA's initial request for payment. If payment is not received within 30 days of the date of this letter, please be advised that interest will accrue on the amount due at the current per annum rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Financial Manual Bulletin for each subsequent 30-day period during which the account is outstanding. If your payment is overdue, EPA may also impose a late payment handling charge of \$15 for each subsequent 30-day period. Additionally, EPA may apply a 6 percent per annum penalty on any principle amount not paid within 90 days of the date of this letter.

Upon receipt of the referenced closing documents, processing of the final credit voucher, and verification of electronic payment or receipt/processing of refund check, EPA will consider this contract closed. We appreciate your assistance in helping us close out this contract. If you should have any questions, please contact me at (XXX) XXX-XXXX.

Sincerely,

Contracting Officer

Attachment

cc: RTP-FC (Finance Center) (MD-32)

Subsection 32.7.2 - Contract Contingency Balances (April 2004)

This subsection was previously Section 32.2 of the Contracts Management Manual.

32.7.2.1 Purpose.

This purpose of this subsection is to establish policy for contract contingency balances necessary to protect the Government's interests.

32.7.2.2 Background.

Prior to September 30, 1999, all expired appropriations were to be canceled five years after their expiration with no obligation adjustments or disbursements permitted to these canceled funds (e.g. funds expiring 9/30/91 will be canceled 9/30/96). Beginning on October 1, 1999, the cancellation period for expiration of expired funds was revised to seven years (e.g. funds expiring 9/30/01 will be canceled 9/30/08).

32.7.2.3 Authority/Applicability.

The establishment of contingency balances under contracts is used to protect the Government's interest, such as to offset costs claimed by a contractor later found to be unallowable. Traditionally, EPA Contracting Officers (COs) have required withholdings from contractor invoices to establish these balances. Withheld amounts properly owed to contractors are released at the completion of contract closeout.

No-year funds, such as the Agency's Superfund appropriation, are not impacted, since these funds do not expire and are, therefore, not subject to cancellation. However, for consistency in applying the contract contingency balance policy across appropriation lines, the policy in this unit is applicable regardless of the source of funding.

32.7.2.4 Definitions [Reserved].

32.7.2.5 Policy

Because of OMB requirements and the potential impact on future funding limits, COs should generally not establish contract contingency balances under contracts that will require disbursement after funds are canceled. COs should only establish contract contingency balances (under FAR provisions permitting withholdings, such as FAR 52.216-8 and 52.216-10) when subsequent recovery of unallowable costs from a contractor would be difficult (such as poor financial condition of the contractor). This unit serves as a class deviation to the required withholdings related to Fixed-Rate Services Contracts in EPAAR 1552.232-73(a)(2).

When a CO determines that a contract contingency balance is necessary, the amount must be limited to the minimum necessary to protect the Government's interest within applicable FAR and EPAAR limits (e.g. not to exceed \$100,000 under FAR 52.216-8 or \$50,000 under EPAAR 1552.232-73). The CO should review the established reserve prior to the cancellation of funds to determine if all or part of the

contract contingency balance may be released.

32.2.7.5.1 Amounts Previously Withheld as Contingency Balances

COs will be notified by the Office of Acquisition Management of specific actions and milestones for release of previous contract contingency balances (in accordance with the above policy) in advance of these cancellation dates. No action is required by COs until they are so notified.

32.2.7.5.2 New Solicitations

Contract clauses have been developed to inform an EPA contractor in those instances when the CO has determined that a contract contingency balance is necessary. A copy of these clauses is included as Appendix 32.7.2-A. One clause is for use when a reserve will be established under FAR provisions related to cost-plus fixed-fee and cost-plus-award-fee type contracts; the second clause is for use when a contract contingency balance is being established under EPAAR 1552.232-73.

(Note: the CO should develop a similar clause when a reserve is established under other FAR or EPAAR provisions). The clause will be automatically included in all affected contracts as part of the Integrated Contracts Management System (ICMS). At their discretion, COs may incorporate the appropriate clause into existing contracts.

APPENDIX 32.7.2-A

FAR CONTRACT CONTINGENCY BALANCES

EP52.232-130 FAR Contract Contingency Balances

If the Contracting Officer determines that a contract contingency balance is necessary under FAR provisions related to cost-plus-fixed-fee and cost-plus-award-fee type contracts, insert the following clause in contracts:

FAR CONTRACT CONTINGENCY BALANCES (AUG 1991)

The Contracting Officer has determined that a contingency balance is necessary for this contract to protect the Government's interest. The amount of the contingency balance shall not exceed \$ *
After payment of 85% of the fixed fee on a cost-plus-fixed-fee contract or 85% of the base fee on a cost-plus-award-fee contract, further payment of such fee shall be withheld until this contingency balance is established.

(end of clause)

Subsection 32.7.4 – Accounting for Appropriations in Contracts (November 2018)

This subsection was previously section 7.4 in the Contracts Management Manual.

32.7.4.1 Purpose.

This document establishes policies and procedures to assure proper accounting for appropriations in contracts.

32.7.4.2 Background [Reserved].

32.7.4.3 Authority/Applicability.

31 U.S.C. 1534 permits an agency to charge an available appropriation at any time during a fiscal year for the benefit of another appropriation available to the agency. 31 U.S.C 1534 requires that amounts must be available in both the appropriation to be charged and the appropriation to be benefitted. The statute requires that final adjustments must be made during or as of the close of the fiscal year to the appropriation benefitted (debit) the appropriation initially charged (credit).

These policies and procedures apply to all funded procurement requests.

32.7.4.4 Definitions [Reserved].

32.7.4.5 Policy.

Generally, each contract shall be funded from one appropriation.

32.7.4.5.1 Indefinite Delivery/Indefinite Quality Contracts

- (a) The Contracting Officer shall include in all indefinite delivery/indefinite quantity contracts a provision requiring the Contractor to summarize in its voucher the amounts claimed for each delivery order.
- (b) Generally, a delivery order should only benefit a single appropriation.
- (c) The following procedures apply when indefinite delivery/indefinite quantity contracts are to be funded from more than one appropriation.
 - (1) Under an indefinite delivery/indefinite quantity contract, the minimum amount is obligated on the contract at the time of award. For delivery orders issued within this minimum, the Project Officer:
 - (i) Shall indicate to the Contracting Officer, for inclusion in the order:

(A) The account number(s) and document control number(s) against which payments are to be made, and

(B) The basis for the finance office to charge vouchered costs to each account number and document control number if more than one account number and document control number appear on the order.

(ii) Shall ensure that:

(A) The account number(s) and document control number(s) on the delivery order are the same as those cited on the contract, and

(B) The aggregate of funds on delivery orders does not exceed amounts obligated on the contract for a particular account number and document control number.

(2) The finance office shall use the information provided in accordance with subparagraph 32.7.4.5.1(c)(1) and the Contractor's voucher to determine the account number(s) and document control number(s) against which to charge amounts claimed by the Contractor for the minimum.

(3) When funding each delivery beyond the minimum with multiple appropriations, the finance office shall use the ratio of funds obligated for each account number on the delivery order as the basis for distributing invoice payments.

32.7.4.5.3 Other Contract Types

The procedures below apply to contracts other than those discussed in paragraphs 32.7.4.5.1 where the work in the contract benefits more than one appropriation:

(a) The finance office shall use the ratio of funds obligated for each account number as the basis for distributing invoice payments.

Section 32.7 – Contract Funding

Subsection 32.7.5 –Contract Funding (January 2017)

32.7.5.1 Purpose.

In accordance with Federal Acquisition Regulation ([FAR](#)) [32.700](#), the purpose of this subsection is to provide acquisition funding requirement guidance. This subsection provides that non-severable services, as well as lease-purchase and capital lease acquisitions, may not be incrementally funded. Guidance is also being provided to clarify use of clause [EPA-B-32-103/ Limitation of Government's Obligation](#), and to clarify contract price structure for contracts that order both goods and services.

32.7.5.2 Background.

(1) On January 5, 2016, the Office of General Counsel, Civil Rights and Finance Law Office (OGC-CRFLO) issued a decision regarding the EPA Acquisition Guide (EPAAG) *Limitation of Government's Obligation* clause, addressing in particular the appropriations issues that may arise when using the *Limitation of Government's Obligation* clause in contracts that order both goods and services (hereafter “combined equipment & services contracts”). Some of the combined equipment & services contracts that OGC-CRFLO reviewed ordered both severable services and non-severable services, and they also contained equipment lease terms and/or clauses where ownership of the equipment would ultimately transfer to EPA. Because EPA is required to record financial obligations differently for non-severable services, severable services, and equipment acquisitions, OGC-CRFLO recommended that EPA not award combined equipment & services contracts where the prices for those components of the contract are lumped into a single, indistinguishable monthly price, and that the Office of Acquisition Management (OAM) should consider modifying the current combined equipment & services contract structure so that the prices for these three components are priced separately.

(2) Equipment acquisitions are not governed by the severable/non-severable distinction, which only applies to services, and are instead governed by separate financial recording requirements. Although agencies in the past have incrementally funded equipment lease-purchase acquisitions consistent with the [recording statute](#) and [bona fide need rule](#), to do so now would be inconsistent with [OMB Circular A-11, Appendix B](#), which requires agencies to record an obligation for lease-purchase acquisitions equal to the total present value of the lease payments. In other words, according to OMB policy, lease-purchase acquisitions and capital leases cannot be incrementally funded.

(3) In its decision dated January 5, 2016, OGC-CRFLO reiterated that non-severable services may not be incrementally funded absent specific statutory authority. Therefore, the *Limitation of Government's Obligation* clause should not be used to incrementally fund non-severable services. Severable services, however, may be incrementally funded using the *Limitation of Government's Obligation* clause, or the EPAAG clause [EPA-B-32-101/ Limitation of Funds Notice](#) where appropriate.

32.7.5.3 Authority/Applicability.

This subsection is issued in accordance with [FAR 1.301\(a\)](#) and [1.401\(f\)](#), and EPA Delegations Manual [Chapter 1-2](#).

32.7.5.4 Definitions.

Severable service – A severable service is one that is acquired to meet multiple needs of the Agency that are expected to arise during the period of performance. Severable services are not performed as a “single undertaking.” Rather, severable services can be conceptually separated into components that each independently provide value to meet agency needs. Severable services tend to be “continuing and recurring in nature,” and there is no discrete and definable “end goal.”

Non-severable service - A non-severable service is one that the Agency acquires in order to meet a single need that exists at the time the Agency begins to procure the service, although it may take the entire duration of the contract for the contractor to meet that need. Non-severable services are performed as “a single undertaking,” and typically result in a discrete and definable “end goal.”

32.7.5.5 Policy.

(a) This policy applies to contracts and/or new orders awarded after the policy issuance date, including new orders awarded under contracts that were awarded prior to policy issuance (i.e., the policy applies to new contracts, and also to new orders awarded under extant pre-policy contracts). The policy also applies to optional periods of performance that are exercised after the policy issuance date.

(b) The work severability determination is made and documented as part of the preaward acquisition planning process. Whether a service may be incrementally funded depends on the nature of the work being ordered and not on contract type.

(c) In accordance with [FAR 16.501-2\(c\)](#), indefinite-delivery contracts, including indefinite-delivery/indefinite-quantity (ID/IQ) contracts, may use any appropriate cost or pricing arrangement under [Part 16](#), including fixed-price, cost-reimbursable, time-and-materials and labor-hour contracts, orders and options as described below.

32.7.5.5.1 Fixed-Price Contracts

(a) Absent a statutory exception, non-severable services may not be incrementally funded, regardless of contract type, and regardless of whether the Agency is using time-limited or no-year funds. The reason non-severable services may not be incrementally funded is that the [recording statute](#), 31 U.S.C. § 1501, prohibits it. When an agency orders a non-severable service, a legal liability arises for the entire cost of that service. Also, the recording statute requires

agencies to record the entire cost of their legal liability against funds available at the time a liability arises. The Comptroller General has advised that agencies cannot use contract clauses to attempt to limit their legal liability for non-severable services. Accordingly, it is ordinarily only severable services that may properly be incrementally funded.

(b) Under a typical fixed-price contract (with no incremental funding), the entire amount of the fixed-price should be placed on the contract or order at award. Unless a statutory exception applies, fixed-price contracts for NON-SEVERABLE services MUST be fully funded at award. Contracting officers and contract specialists should consult with OGC-CRFLO if they believe a statutory exception may apply. Incrementally funding a fixed-price contract for SEVERABLE services, however, is permissible when the following two conditions are met:

(1) The ENTIRE amount of the fixed-price from the CORRECT appropriation(s) must be accounted for at the program office and must be budgeted or allocated in its spending plan to be placed on the contract at issue. The program office must set aside, commit, and/or reserve those funds for the contract. It may not use those funds on another project unless the contract is terminated in accordance with the applicable termination clauses.

(2) The contracting officer must use EPAAG [EPA-B-32-103](#)/*Limitation of Government's Obligation* to notify the contractor that severable services identified in the clause may be incrementally funded. The *Limitation of Government's Obligation* clause requires the contractor to provide notice of at least five days to the contracting officer when, in the contractor's best judgement, the total amount payable by the Government, including any termination costs, will approximate 85% of the total amount then allocated to the contract for performance of its applicable terms.

(3) Fixed-price contracts or orders that order both severable and non-severable services must be structured so that the severable services and non-severable services are in separate CLINs, so that the severable services may be incrementally funded while the non-severable services are fully funded.

32.7.5.5.2 Cost-Reimbursable and Other Contract Types (e.g., Time-and-Materials)

(a) As provided in 32.7.5.5.1(a)(2), whether a service may be incrementally funded depends on the nature of the work being ordered and not on contract type.

(b) Cost-reimbursable contracts, orders, options, and CLINs for non-severable services must be fully funded at the time of award or exercise.

(c) Cost-reimbursable contracts, orders, options, and CLINs for severable services may be incrementally funded using EPAAG clause [EPA-B-32-101](#)/*Limitation of Funds Notice*. Cost-reimbursable contracts and orders must also contain FAR clause [52.232-22](#)/*Limitation of Funds* in accordance with [FAR 32.706-2\(b\)](#).

(d) Time-and-materials and labor-hour contracts, orders, options, and CLINs for severable services may be incrementally funded using [EPA-B-32-103](#)/*Limitation of Government's*

Obligation. Time-and-materials and labor-hour contracts and orders must also contain FAR clause 52.232-7/Payments under Time-and-Materials and Labor-Hour Contracts in accordance with FAR 32.111(a)(7). Contracting Officers must ensure that the days-advance-notice and percentage-complete figures are the same in both the *Limitation of Government's Obligation* clause and FAR clause 52.232-7 (e.g., 30 days/85 percent).

32.7.5.5.3 Lease-Purchase and Capital Lease Contracts

Lease-purchase acquisitions and capital leases of equipment may not be incrementally funded under OMB Circular A-11, Appendix B. If, after conducting an analysis under [FAR Subpart 7.4](#), a contracting officer is considering entering into such an arrangement, they should consult with OGC-CRFL0 and OCFO to clarify OMB policy regarding the recording of obligations for lease-purchases and capital leases.

32.7.5.6 Contracting Officer Requirements.

32.7.5.6.1 Fixed-Price Contracts

(a) Contracting officers must make a determination and findings (D&F) that the program office has committed the funds as described above in 32.7.5.5.1(b) before proceeding with incremental funding for severable services in fixed-price contracts. If no D&F is made, then the contract or order must be fully funded.

(b) If proceeding with incremental funding of severable services in fixed-price contracts, Contracting officers must use [EPA-B-32-103/ Limitation of Government's Obligation](#) to notify the contractor that severable services ordered by contract may be incrementally funded.

(c) Contracting officers must fully fund contracts, orders, options, and CLINs for non-severable services at the time of award or exercise.

32.7.5.6.2 Cost-Reimbursable and Other Contract Types (e.g., Time-and-Materials)

(a) Contracting officers must fully fund contracts, orders, options, and CLINs for non-severable services at the time of award or exercise.

(b) If proceeding with incremental funding of severable services in cost-reimbursable contracts, contracting officers must use EPAAG clause [EPA-B-32-101/ Limitation of Funds Notice](#) and FAR clause 52.232-22/Limitation of Funds in accordance with [FAR 32.706-2\(b\)](#).

(c) If proceeding with incremental funding of severable services in time-and-materials and labor-hour contracts, contracting officers must use [EPA-B-32-103/Limitation of Government's Obligation](#). Contracting officers must also use FAR clause 52.232-7/Payments under Time-and-Materials and Labor-Hour Contracts in accordance with FAR 32.111(a)(7). Contracting officers must ensure that the days-advance-notice and percentage-complete figures are the same in both the *Limitation of Government's Obligation* clause and FAR clause 52.232-7 (e.g., 30 days/85 percent).

32.7.5.6.3 Lease-Purchase and Capital Lease Contracts

If, after conducting an analysis under FAR subpart 7.4, a contracting officer is considering entering into a contract containing lease-purchase or capital lease terms, they should consult with OGC-CRFLO and OCFO to clarify OMB policy regarding the recording of obligations for lease-purchases.

32.7.5.6.4 Recording Obligations for Combined Equipment & Services Contracts

For combined equipment & services contracts, contracting officers must record an obligation reflecting (1) the full value of all non-severable services, (2) the full value of any equipment purchased, and (3) amounts necessary to fund the increments of severable services.

32.7.5.7 Contract Clauses.

(a) To incrementally fund fixed-price and time-and-materials contracts and orders for severable services that may require incremental funding as the budget requires, contracting officers shall insert clause EPA-B-32-103/*Limitation of Government's Obligation*.

(b) To incrementally fund cost reimbursable contracts for severable services, contracting officers shall insert clause EPA-B-32-101/ *Limitation of Funds Notice* or an alternate. The basic form of the clause shall be used in cost-plus-fixed-fee contracts. Alternate I shall be used in cost-reimbursement contracts with no fee or cost-sharing. Alternate II shall be used in cost-plus-award-fee contracts.

Next page –EPAAG clauses *Limitation of Government's Obligation* and *Limitation of Funds Notice*

EPA-B-32-103 LIMITATION OF GOVERNMENT'S OBLIGATION (January 2017)

Prescription – Contracting officers shall insert the subject clause in fixed-price and time-and-materials contracts and orders **for severable services** that include separate contract line items that may require incremental funding as the budget requires.

(a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Contract line items [FILLIN#1#insert number] through [FILLIN#2#insert number] are severable and may be incrementally funded. For these items, the sum of \$[FILLIN#3#insert dollar amount] of the total price is presently available for payment and allotted to this contract.

(b) For items identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those items for the Government's convenience, approximates the total amount currently allotted for those items to the contract. The Contractor shall not continue work on those items beyond that point. Subject to the clause entitled "Termination for Convenience of the Government," the Government will not be obligated, under any circumstances, to reimburse the Contractor in excess of the amount payable by the Government in the event of the termination of applicable contract line items for convenience including costs, profit, and estimated termination costs for those line items.

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (h) of this clause, the Contractor will notify the Contracting Officer, in writing, at least ____ [FILLIN#4#number of days] days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate ____ [FILLIN#5#percentage] percent of the total amount currently allotted to the contract for performance of the applicable items. The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of the applicable line items up to the next scheduled date for the allotment of funds identified in paragraph (a) of this clause, or to a substitute date as determined by the Government pursuant to paragraph (d) of this clause. If, after such notification, additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause entitled "Termination for Convenience of the Government."

(d) The parties contemplate that, subject to the availability of appropriations, the Government may allot additional funds for continued performance of the contract line items identified in paragraph (a) of this clause and will determine the estimated period of contract performance which will be covered by the funds. If additional funds are allotted, the Contracting Officer will notify the Contractor in writing. The Contractor shall not resume performance of the contract line items identified in paragraph (a) until the written notice is received. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and to the new estimated period of contract performance. The contract will be modified accordingly.

(e) The Government may, at any time prior to termination, allot additional funds for the performance of the contract line items identified in paragraph (a) of this clause.

(f) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default". The provisions of this clause are limited to the work and allotment of funds for the contract line items set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded.

(g) Nothing in this clause affects the right of the Government to otherwise terminate this contract pursuant to the contract clause entitled "Termination for Convenience of the Government".

(h) The parties contemplate that the Government may obligate funds to this contract in accordance with the following schedule:

RECAPITULATION:

	PRIOR AMOUNT	THIS MOD	NEW AMOUNT
Base Period			

Total Maximum Amount:[FILLIN#6#insert dollar amount]

Funded Amount:[FILLIN#7#insert dollar amount]

EPA-B-32-101 LIMITATION OF FUNDS NOTICE (January 2017)

Prescription - Contracting officers shall insert the subject clause or an alternate in cost reimbursable contracts **for severable services**. The basic form of the clause shall be used in cost-plus-fixed-fee contracts. Alternate I shall be used in cost-reimbursement contracts with no fee or cost-sharing. Alternate II shall be used in cost-plus-award-fee contracts.

Basic Form - (a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Pursuant to clause [52.232-22/Limitation of Funds](#), incremental funding in the amount of \$[FILLIN#1#insert dollar amount] is allotted to cover estimated cost. Funding in the amount of \$[FILLIN#2#insert dollar amount] is provided to cover the corresponding increment of fixed fee. The amount allotted for costs is estimated to cover the contractor's performance through [FILLIN#3#insert appropriate date].

(b) When the contract is fully funded as specified in clause [EPA-B-16-102/ Estimated Cost and Fixed Fee](#), then clause [52.232-20/Limitation of Cost](#) shall become applicable.

(c) Recapitulation of Funds

Funding Action	Estimated Cost	Fixed Fee	Total CPFF
Previous Amount [FILLIN#4# Estimated Cost, Fix Fee, Total CPFF]			
This Modification [FILLIN#5# Estimated Cost, Fix Fee, Total CPFF]			
Total Funded [FILLIN#6# Estimated Cost, Fix Fee, Total CPFF]			
Total Per Contract [FILLIN#7# Estimated Cost, Fix Fee, Total CPFF]			

Balance Unfunded [FILLIN#8# Estimated Cost, Fix Fee, Total CPFF]

Alternate I - (a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Pursuant to clause [52.232-22/Limitation of Funds](#), incremental funding in the amount of \$[FILLIN#1#insert dollar amount] is allotted to cover estimated cost. The amount allotted for costs is estimated to cover the contractor's performance through [FILLIN#2#insert appropriate date].

(b) When the contract is fully funded as specified, then clause [52.232-20/Limitation of Cost](#) shall become applicable.

(c) Recapitulation of Funds

Funding Action Estimated Cost

Previous Amount [TDB]

This Modification [TDB]

Total Funded [TDB]

Total Per Contract [TDB]

Balance Unfunded [TDB]

Alternate II - (a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Pursuant to clause [52.232-22/Limitation of Funds](#), incremental funding in the amount of \$[FILLIN#1#insert dollar amount] is allotted to cover estimated cost. Funding in the amount of \$[FILLIN#2#insert dollar amount] is provided to cover the corresponding increment of base fee. Funding in the amount of \$[FILLIN#3#insert dollar amount] is provided to cover the corresponding increment of the award fee pool. The amount allotted for costs is estimated to cover the contractor's performance through [FILLIN#4#insert appropriate date].

(b) When the contract is fully funded (i.e., the sum of the total estimated cost, base fee, award fee pool available for award, and award fee awarded, as set forth in the schedule of this contract), then clause [52.232-20/Limitation of Cost](#) shall become applicable.

(c) Recapitulation of Funds

Funding Action	Estimated Cost	Award Fee	Fixed Fee	Total CPAF
Previous Amount	[TDB]	[TDB]	[TDB]	[TDB]
This Modification	[TDB]	[TDB]	[TDB]	[TDB]
Total Funded	[TDB]	[TDB]	[TDB]	[TDB]
Total Per Contract	[TDB]	[TDB]	[TDB]	[TDB]
Balance Unfunded	[TDB]	[TDB]	[TDB]	[TDB]

Q1 – Why is this policy being issued now?

A1 – This policy is being issued because the Office of General Counsel (OGC) issued a decision in 2016, based on GAO case law, reiterating that non-severable services must be fully funded when ordered unless there is specific statutory authority to incrementally fund it. This policy also provides that lease-purchases and capital leases must be fully funded when the work is ordered.

Q2 – What is the difference between severable and non-severable services?

A2 - Severable services are not performed as a single endeavor, but instead they can be conceptually separated into components that each independently provide value to meet agency needs, and they tend to be “continuing and recurring in nature” with no discrete and definable “end goal.”

By comparison non-severable services are performed as “a single undertaking” typically resulting in a discrete and definable “end goal.” Non-severable services meet a need that exists at the time the Agency begins to procure the service, although it may take the entire duration of the contract for the contractor to meet that need (like writing a complicated research report).

Q3 – Does this policy apply retroactively?

A3 – It applies to contracts and new orders awarded after policy issuance date, including new orders awarded under existing contracts. It also applies to optional periods of performance that are exercised after the policy issuance date.

Q4 – At what point in the acquisition process is the severability determination made?

A4 – Severability is determined and documented during the preaward planning process.

Q5 - This policy says that only severable work can be incrementally funded. I thought all cost-reimbursable work could be incrementally funded irrespective of severability.

A5 – No that’s not true, only severable cost-reimbursable work may be incrementally funded, while non-severable cost-reimbursable work must be fully funded at award. Whether a service may be incrementally funded depends on the nature of the work being ordered and not on contract type.

Q6 – Does it matter that work assignments issued for cost-reimbursable contracts are funded at the contract level, while task orders are funded at the task order level?

A6 – Yes it matters a lot!!! Because work assignments are funded at the contract level and are not funded ordering instruments themselves (like task orders are), the funding for all work assignments is put onto the underlying contract and not onto the work assignments themselves. Because all of the funding is added at the contract level, cost-reimbursement contracts must order only severable or non-severable work, and contracting officers must not issue severable and non-severable work assignments under the same contract. For example, if a program office wants to be able to order both severable and non-severable cost-reimbursable work, then it must have two contracts where one is for severable work assignments and the other is for non-severable work assignments. This limitation is another reason for contracting officers to consider other contract types like indefinite-delivery/indefinite-quantity (ID/IQ) instead of cost-reimbursement contracts.

Q7 – Are you allowed to incrementally fund fixed-price contracts too? I thought all fixed-price work had to be fully funded.

A7 – No that's not true either, the ability to incrementally fund has to do with severability and not contract type. In the case of fixed-price incremental funding though, in addition to using required clause [EPA-B-32-103](#)/*Limitation of Government's Obligation*, the contracting officer must also make a determination and findings that the program office has committed all required funds before proceeding with the incremental funding.

Q8 – Does this policy apply to ID/IQ contracts? ID/IQ doesn't have its own extended policy discussion like fixed-price or cost-reimbursable or time-and-materials contracts do.

A8 – In accordance with [FAR 16.501-2\(c\)](#), ID/IQ contracts may use other cost or pricing arrangements provided under [Part 16](#), including fixed-price, cost-reimbursable, time-and-materials and labor-hour contracts. So the ID/IQ contract writer can use the funding clauses for FP and CR and TM and LH as needed in the ID/IQ contract.

Q9 – Do you have a cheat sheet for which funding clauses to use with which contract type?

A9 – This short outline below is no substitute for reading the policy but does provide the contract type, clause numbers and names:

Fixed-price contracts – use clause [EPA-B-32-103](#)/*Limitation of Government's Obligation*

Cost-reimbursable contracts – use clause [EPA-B-32-101](#)/*Limitation of Funds Notice* and FAR clause [52.232-22](#)/*Limitation of Funds*

Time-and-materials and labor-hour contracts - use clause [EPA-B-32-103](#) and FAR clause [52.232-7/ Payments under Time-and-Materials and Labor-Hour Contracts](#). **ID/IQ contracts** – use a clause combination of FP and CR and TM and LH as needed.

Q10 – Is there online training available to supplement this policy?

A10 – the Office of the Chief Financial Officer (OCFO) has posted appropriations and budgeting courses on the OCFO intranet page [here](#).

Q11 - How frequently does the Contracting Officer (CO) need to do a determination and findings (D&F): Each time the program office commits a new amount of incremental funding? Once prior to the start of each option year? Once for the entire contract prior to award?

A11 – Once for the total contract or order amount; the D&F is only required for fixed-price contracts/orders under EPAAG 32.7.5.6.

Q12 - Does the Contracting Officer also need to do a D&F or a memorandum for the file as to which services in the Statement of Work (SOW) are severable services and which are non-severable, or is that part of the D&F as to why the CO is going to allow the Program Office to use incremental funding?

A12 – The contract will already delineate which services are severable or non-severable, and the D&F should specify which contract severable services are being incrementally funded.

Q13 - If we are incrementally funding a firm-fixed-price requirement, what is the contractor's required to deliver in that type of funding arrangement?

A13 – Contractor deliveries are in accordance with contract terms and conditions.

Q14 - If we are incrementally funding a firm-fixed-price requirement, is it basically a firm-fixed-price, level-of-effort as defined in FAR 16.207?

A14 – No, FAR 16.207 describes LOE work that can be stated only in general terms and cannot be clearly defined.

Q15 - What is the liability of the government if the program office or government doesn't fully fund the firm-fixed-price effort after all?

A15 – The government is liable only for the funded amount, not the entire order amount.

Q16 - What is a contractor's risk when agreeing to that type of pricing arrangement? What is the government's risk?

A16 – Risk is that the government won't fully fund the order, so contractors may increase their prices accordingly as compensation.

Q17 - Does the CO have to do a partial termination for convenience of the firm-fixed-price requirement if the program office doesn't provide all of the required funding that the government and the contractor agreed to as the firm-fixed-price?

A17 – Yes, the CO would do a partial termination for convenience.

Section 32.9 – Prompt Payment

Subsection 32.9.1 Invoice Review (June 2020)

This subsection was previously Chapter 11.2 of the Contracts Management Manual.

32.9.1.1 Purpose.

This subsection describes the policy and responsibilities for the processing of contract invoices.

32.9.1.2 Background.

Invoice reviews are a critical function impacting the management of public funds. It is EPA's policy to review invoices thoroughly to ensure that adequate information, proper rationale, and documentation exists to support payment of contractor invoices in a timely manner. Adherence to this policy will result in payment of costs which are allowable, allocable, and reasonable. Additionally, interest penalties due to late payment pursuant to the Prompt Payment Act will be avoided.

Congress enacted the Prompt Payment Act to require federal agencies to pay bills in a timely manner and interest penalties when payments are late. Generally, the Act requires EPA to pay contractors within 30 calendar days of receipt of a proper invoice. If a proper invoice is not paid within 30 days, the Agency owes the contractor interest, which will be paid from program office funds.¹

32.9.1.3 Authority/Applicability.

The Contracting Officer (CO) is ultimately responsible and accountable for invoice processing under individual contracts. CO's responsibilities are noted in 32.9.1.5(b)(4) on page 4 of this policy. However, pursuant to Federal Acquisition Regulation (FAR) 1.102-4, "The authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the System, consistent with law." As such, the CO may delegate authority to review and approve contract invoices/vouchers to the Contracting Officer's Representative (COR). However, the CO still retains the responsibility to ensure that invoices are processed accurately and in a timely manner.

32.9.1.4 Definitions.

¹ Change Notice #18-19 issued December 18, 2018, incorporated the expanded invoice review requirements into EPAAG 32.9.1.5(b)(3) from IPN 14-09 *Limitation on the Use of Qualifications in Non-Key Labor Categories in EPA Contracts* issued January 5, 2015. The expanded invoice review requirements noted in EPAAG 32.9.1.5(b)(3) were effective January 5, 2015.

Contracting Officer's Representative (COR) – A COR is a technical representative of the CO. A COR is a federal employee designated and authorized in writing by the CO to perform specific technical or administrative functions.

Invoice/Voucher Approving Official – For the purpose of this document, the Invoice/Voucher Approving Official is the CO, COR (if this duty is delegated by the CO), or anyone with the authority to approve invoices or vouchers.

32.9.1.5 Policy.

(a) General.

It is the policy of the government to review invoices thoroughly for cost reasonableness and to process invoice submittals in a timely manner. Adherence to this policy will result in payment of costs which are allowable, allocable, and reasonable, and avoid interest penalties due to late payment of such costs.

Approving officials involved in invoice reviews must (1) review contract invoices thoroughly, (2) process invoices in a timely manner, and (3) maintain records of their invoice reviews and actions taken as a result of the reviews. It is important that invoice charges are closely examined and rejected when appropriate.

The payment office will not pay interest penalties if proper payment delays are due to a disagreement between the government and contractor concerning:

- (1) The payment amount;
- (2) Contract compliance; or
- (3) Amounts temporarily withheld or retained in accordance with the terms of the contract.

The CO and the contractor must resolve claims involving disputes, and any interest that may be payable, in accordance with the Disputes clause in the contract.

The government will compute interest penalties in accordance with Office of Management and Budget (OMB) Prompt Payment Regulations in 5 Code of Federal Regulations (CFR), Part 1315. These regulations are available via the Internet at <https://www.fiscal.treasury.gov/prompt-payment/>.

The Agency also diligently seeks discounts for prompt payment. "Discount for prompt payment" means an invoice payment reduction offered by the contractor in exchange for payment prior to the due date, which is typically 30 calendar days after receipt of a proper invoice.

(b) Roles and Responsibilities.

(1) Office of the Chief Financial Officer (OCFO), Research Triangle Park Finance Center (RTP-FC)

The Agency's official contract paying office is required to receive, review, and certify payments to ensure transmittal to Department of Treasury within 30 calendar days from the receipt of a proper invoice, subject to receipt of the COR's invoice approval.

RTP-FC is responsible for performing the following tasks:

- (i) Confirming and annotating official receipt of the invoices and verifying that the invoice is proper and in accordance with the Prompt Payment Act.
- (ii) Verifying and entering the terms of any discounts in the Contract Payment System (CPS) for review in EASYLite.
- (iii) Tracking the names and addresses of the approving official (COR), the contractor's taxpayer identification number (TIN) and DUNS number, as well as electronic funds transfer (EFT) banking information.
- (iv) Coordinating receipt of approvals and certification of undisputed amounts for payment by the Department of the Treasury.
- (v) Maintaining the official Agency record of invoice payments to the contractor, including invoices submitted, payment dates and amounts, discounts taken, rejections, refunds, and account balances.

(2) Invoice/Voucher Approving Official at the Contract-Level – Duties for the approving official at this level include approval of invoices for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee and fixed-price contracts; Provide oversight and assistance to Task Order (TO) level approving officials; Monitor contract-level invoice costs. Additional responsibilities at this level include the following:

- (i) Ensuring availability of funds to pay anticipated invoices in correct accounts, proper account balances, and distribution of payment by account.
- (ii) Providing a procurement request (PR) form with additional funds when needed.
- (iii) Reviewing the overall contract invoice for compliance with the contract including recalculating amounts, verifying indirect rates, and contract ceilings.
- (iv) Providing assistance to TO level approving officials with invoice review responsibilities, including providing the latest rate and cost information.
- (v) Rejecting questioned costs.
- (vi) Documenting (keeping a file of) detailed invoice reviews, questioned costs, and communications concerning invoice issues.
- (vii) Communicating with the CO on issues with invoices or the review process.
- (viii) Reviewing monthly technical (e.g. work plans) and financial progress reports.
- (ix) Ensuring contract performance is commensurate with invoiced charges. Consult with the CO on any potential problems identified through such reviews.

Note: The COR appointment letter provides the delegated duties and responsibilities of the COR beyond those that may be delegated as listed in this guide. Consult the COR Policy link for additional information at <https://contracts.epa.gov/CORpolicy>.

(3) Invoice/Voucher Approving Official at the Task Order (TO) and Delivery Order (DO) level

For the purposes of this policy, if delegated by the CO DOCOR/TOCOR duties are interchangeable. Responsibilities for the Invoice/Voucher Approving Official at this level include the following:

- (i) Reviewing allocability, allowability and reasonableness of invoice costs, compliance with contract terms (such as ceilings and minimum personnel qualifications), and approved rates.
- (ii) Ensuring availability of funding for anticipated invoice costs.
- (iii) Deobligating funds when appropriate.
- (iv) Rejecting questioned costs for task orders.
- (v) Approving payment for task orders.
- (vi) Maintaining documentation of invoice reviews and approvals, as well as communicating concerns regarding invoice issues.
- (vii) Reviewing all monthly progress reports, technical and financial, to determine if the costs are allowable, allocable, and reasonable and recommend approval or disapproval to the Contract-Level approving official.
- (viii) Review, reject or , approve invoices.
- (ix) Approve payment for supplies, as applicable. Delivery Orders are for supplies and assigned approving officials should follow the invoice review guidance to approve payment.

Note: If delegated by the CO, the COR appointment letter provides the delegated duties and responsibilities of the COR beyond those in this guide. Consult the COR Policy link for additional information at <https://contracts.epa.gov/CORpolicy>.

(4) Contracting Officer (CO) – The responsibility for invoice review and approval is first vested with the CO, but with the CO's approval, may be delegated to the COR. CO responsibilities include:

- (i) Providing written delegation of authority to an individual to approve payments under any EPA contractual vehicle.
- (ii) Establishing contract requirements for submission of work or staffing plans, monthly progress reports, and invoices.
- (iii) Negotiating and modifying the contract to change labor rates, equipment rates, indirect cost rates, and other contract terms.

- (iv) Notifying the Invoice/Voucher Approving Official of any changes to labor and any other rates in the contract when changes occur during the life of the work assignment (for existing WA contracts) or task order.
- (v) Modifying or amending the contract or task order to increase funds, hours, cost ceilings, or period of performance when appropriate.
- (vi) Monitoring the contract to ensure there are sufficient funds to pay anticipated costs and that costs are paid from the appropriate account.
- (vii) Approving overtime, property, subcontracts, or training charged directly to the contract, if applicable.
- (viii) Working with the Invoice/Voucher Approving Official to resolve any invoice questions that the approving official cannot resolve alone.
- (ix) Rejecting disallowed unsupported invoice costs and assisting the COR with rejecting costs.
- (x) Working with the Financial Administrative Contracting Officer (FACO) to resolve cost and financial issues raised during Financial Monitoring Reviews (FMRs).
- (xi) Maintaining record of invoices submitted, payments, discounts taken, rejections, and refunds. Also maintaining a record of audit requests, audit reports, negotiations, audit resolution, and negotiated contract costs by fiscal period.
- (xii) Deobligating excess funds as appropriate.
- (xiii) Establishing the contract scope, terms, and conditions, as well as making changes to the task orders as needed.
- (xiv) At EPA, COs do not review individual invoices on a monthly basis. Instead, the CO supports the CORs/ Invoice/Voucher Approving Officials on their reviews and with problem resolution.
- (xv) COs perform periodic monitoring of a COR/ Invoice/Voucher Approving Official's invoice review.
- (xvi) COs should approve invoices in the absence of the Invoice/Voucher Approving Official and alternate.

Note: A CO's periodic monitoring must include at least one detailed review of a contract invoice for each contract year. However, for many contract types one review may not be sufficient. In these instances, if more frequent monitoring is required to ensure proper invoice approval, the CO must conduct additional invoice reviews. The CO has the ultimate responsibility and accountability for invoice processing under individual contracts. It is highly recommended that the CO perform these reviews at least quarterly, or more frequently as needed.

(5) Office of Acquisition Solutions' (OAS) Financial Analysis and Oversight Branch

The mission of the Financial Analysis and Oversight Branch (FAOB) is to support the CO in the discharge of their financial oversight responsibilities under the contract. FAOB provides a cadre of services that directly impacts the pre-solicitation, solicitation, evaluation, and contract management phases of most procurements, in order to assist contracting staff in awarding contracts which represent fair and reasonable costs, and/or the best overall value to the

government. Additionally, the financial analysts conduct reviews to determine if contractors are complying with the financial terms and conditions of the contracts, such as whether billed costs are allowable, allocable, and reasonable, as well as whether the contractor's accounting system is reliable. They also monitor the status of all open audit reports and ensure that issues are addressed in a timely manner. FAOB also issues the indirect cost provisional and final billing rate agreements that contractors should be using in their invoices. Additionally, Invoice/Voucher Approving Officials should utilize the Financial Monitoring Reviews (FMRs) and audit reports issued by FAOB to determine if any noted deficiencies are occurring on their contracts. A listing of FAOB contacts and services can be found on the EPA intranet by going to <http://oamintra.epa.gov/drupal/?q=node/133>.

FAOB's cost and rate negotiations team review and negotiate Agency contract or incurred cost and rate proposals to establish the contractor's indirect cost rates (e.g., labor fringe benefit, overhead, general and administrative) on cost-reimbursement contracts. Since these rates are based on the contractor's actual costs, a provisional or billing rate is established initially, and a final rate is negotiated after the period of performance is completed. Questions about current provisional indirect cost rates should be addressed to the CO, who may consult the FAOB. For indirect rates, both the CO and FAOB FACO may modify the contract to retroactively or prospectively change rates.

FAOB's Financial Analysis Team also perform FMRs on active cost-type and hybrid contracts in excess of \$5 million. The reviews are conducted at the contractor's location/offices. FMRs determine if the contractor's accounting and billing systems and internal control policies and procedures are adequate to support costs claimed on the invoices. The reviews result in the timely recovery of overpayments and lost interest, settle allowable cost issues, and other matters associated with the contractor's invoices. A few examples of FMR findings include:

- Indirect costs improperly charged
- Billing expressly unallowable costs
- Duplicate billings
- Ratification issues
- Exceeding contractual ceilings
- Unauthorized overtime
- Excess funds requiring de-obligation
- Unqualified personnel
- Unsupported costs included in the invoices
- Subcontractor performing more than 51% of the contract effort
- Overbilled fee
- Downward equitable adjustment calculations
- Time sheet and timekeeping deficiencies

FMRs resolve questionable costs in a timely manner, and they close the time gap between the initial invoice review and audit of the contractor's final incurred cost proposals.

(6) Defense Contract Audit Agency (DCAA) or the Office of Inspector General (OIG)
Office of Audit

DCAA and OIG perform annual incurred cost audits of all direct and indirect costs for all federal contracts. Typically, these audits are performed three to five years after the end of the contractor's fiscal year. The audits utilize a sampling plan which cover all contracts simultaneously. Sampling typically results in reviewing a very small percentage of transactions. Audit results are resolved by the appropriate contracting offices. Costs rejected on EPA contracts must be referred to the cognizant auditor by EPA's FAOB to assure that costs are not paid during invoice processing, and are not subsequently allowed as costs accepted by the Auditors.

(7) OAS's Policy and Training Branch (PTB)

PTB drafts Agency-wide policy on the invoice process, including clauses for invoice and monthly progress report format and content. Integrates FAR requirements into Agency policy or processes. Provides training on Agency invoice review policies.

(8) Contract Management Assessment Team (CMAT)

OAS's CMAT performs periodic reviews of the operating organizations (HQAD, CAD, ITAD, & all Regional Offices) throughout the year. The CMAT is designed to ensure that contracting organizations operate in an effective and efficient manner and conform to the requirements as prescribed by the Federal Manager's Financial Integrity Act (FMFIA) of 1982 and the OMB Circular A-123 *Management of Internal Controls*.

As such, the CMAT conducts post-payment reviews periodically to assure compliance with Agency policies and procedures, which may include statistical sampling of contracts to determine proper payment and compliance. More targeted reviews may be conducted at the office level to include self assessments to address possible instances of improper payments to contractors or cases of suspected fraud.

The FMRs performed by FAOB's auditors and accountants also augment the services provided by the CMAP team in order to ensure compliance with the Agency's invoice reviews and approval policies and procedures.

32.9.1.6 Additional Guidance

Additional guidance on processes and procedures can be found in the Invoice Review Guide at https://usepa.sharepoint.com/sites/OARM_Community/oam.kms/Toolkits/Invoice%20Reviews.aspx.

Subsection 32.9.2 - Do Not Pay (DNP) Database “Hits” (OCT 2017)

This subsection was previously Unit 32.9 of the Acquisition Handbook.

32.9.2.1 Purpose.

The purpose of this section is to notify all personnel involved in the invoicing process of EPA’s policy and procedures for dealing with contractor matches (i.e., hits) to the U.S. Treasury’s Do Not Pay (DNP) solution.

32.9.2.2 Background.

The Office of Management and Budget (OMB) issued Memorandum M-12-11, Reducing Improper Payments through the “Do Not Pay List” on April 12, 2012. In accordance with the memorandum, each agency is required to develop a plan for using DNP, including how to address system hits. The DNP solution was developed to assist Federal Agencies in an effort to help prevent, reduce and stop improper payments from being made and to identify and mitigate fraud, waste and abuse.

The DNP Solution is a web-based, single-entry access portal that enables agencies to access numerous data sources (e.g., SAM/CCR, Excluded Parties List, Death Master File, etc.). The Data Analytics Service allows agencies to identify trends, risks and patterns of behavior that may warrant further agency review.

32.9.2.3 Authority/Applicability.

President Obama issued Executive Order 13520-- Reducing Improper Payments and Eliminating Waste in Federal Programs on November 23, 2009 which, directed agencies to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government.

The OMB Memorandum M-12-11, Reducing Improper Payments through the “Do Not Pay List” directed Executive Agencies to take immediate steps to use the centralized solutions that are already in place for pre-payment eligibility review.

32.9.2.4 Definitions.

Death Master File (DMF) - contains a listing of deaths that have been reported by the Social Security Administration.

Excluded Parties List (EPLS) - contains a list of individuals and firms excluded by federal government agencies from receiving new federal awards.

Hit - a match is where the contractor/company appears on one of the “Do Not Pay” databases.

System for Award Management/Central Contractor Registration (SAM/CCR/EPLS) - the official

on-line registrant database for the U.S. Federal Government which collects, validates, stores and disseminates data in support of agency acquisition and award missions.

32.9.2.5 Policy.

The EPA Las Vegas Finance Center (LVFC) will conduct continuous post-award monitoring of awards through the DNP portal to check invoice payments to contractors and identify trends, risks and patterns of behavior that may warrant further agency review. Contracting Officers (CO), Contracting Officer's Representatives (COR) and project/program officers may be contacted to assist in resolution of issues with contractors who appear on the DNP list.

32.9.2.6 Procedures.

When a match is identified by DNP, the LVFC staff will notify the Research Triangle Park - Finance Center (RTP-FC), who will notify the appropriate CO. The notification must include the data source associated with the match. If there are multiple awards to the same entity, RTP-FC will notify the CO with the most active awards of the identified recipient.

The CO will reach out to the applicable COR and/or project/program officer for assistance in resolving any issues arising from hits on the DNP Solution.

If appropriate, a stop-work order may be issued in accordance with FAR 42.1303 Stop-work orders. However, the contractor will receive payment for services already rendered and will continue to be paid for work accomplished, until the stop-work order is in effect, consistent with current EPA invoice review and payment procedures. Valid invoices will be subject to FAR 32.9 – Prompt Payment.

If the issue is minor or administrative (e.g., SAM/CCR registration expiration or data), the CO/CS may resolve the issue without higher level involvement.

If the issue indicates that a cause for debarment or suspension may exist, the procedures at EPAAR 1509.4 - Debarment, Suspension and Ineligibility, specifically 1509.406, shall be followed. Additional guidance is provided in FAR 9.4 and EPAAG Section 9.4 -Debarment, Suspension and Ineligibility.

If termination of award is required due to irresolvable issues or ineligibility to continue award performance, no option shall be exercised or the award will be terminated in accordance with FAR Part 49 - Termination of Contracts or FAR 12.403 - Termination (Commercial).

Issues should be resolved in a timely manner. The disposition shall be communicated to all parties involved, including the contractor, LVFC, RTP-FC, and the program office and documented in the contract file by the Contracting Officer. The issue resolution may be subject to FAR Part 33 - Protests, Disputes, and Appeals.

CHAPTER 33 – PROTESTS, DISPUTES AND APPEALS

Section 33.1 - Protests

Subsection 33.1.1 – Protests and Contract Performance (November 2006)

This subsection was previously Unit 33.2 of the Acquisition Handbook.

33.1.1.1 Purpose.

This subsection provides guidance to: (a) improve the quality of Agency Determination & Findings (D & F) when award or continued performance is needed, (b) set the approval level for D & Fs, when the protest is filed at the Agency, at the Division Director, and (c) provide sample documents to assist in the preparation of D & Fs.

33.1.1.2 Background.

The Office of Acquisition Management's goal is to eliminate sustainable protests. Toward this end, the Acquisition Policy and Training Service Center has issued news flashes to address specific topics concerning protests; this subsection was originally the third in a series and was issued in March 2005. It provides guidance and sample documents relating to award and continued contract performance in light of a protest.

Before or after EPA awards a contract, a bidder or offeror may submit a timely protest either to the Agency or to the General Accountability Office (GAO). As indicated in FAR 33.103 (f) and 33.104 (b), the filing of a timely Agency or GAO protest automatically suspends, or stays, the contracting officer's (CO) legal authority either to award a contract or to continue performance under a newly awarded contract.

The automatic suspension, which would otherwise last until the protest is resolved, may be lifted only if a written determination is made that contract performance should begin or continue while the protest is pending. The determination must be supported by a finding that either: (a) immediate performance of the contract is in the "best interest" of the Government, or (b) "urgent and compelling" circumstances that significantly affect the United States will not permit waiting for the decision concerning the protest. Award of a contract, or continued performance in light of a protest should be rare; approval of a D & F should only be sought when the "best interest" or "urgent and compelling" justification is strong.

33.1.1.3 Authority/Applicability.

This section covers protests filed under Executive Order 12979, Agency Procurement Protests, and protests filed at GAO under 4 CFR Part 21. These protest authorities and the applicable procedures are covered at FAR Subpart 33.1.

33.1.1.4 Definitions [Reserved].

33.1.1.5 Policy.

33.1.1.5.1 D & F Justification - Best Interest vs. Urgent and Compelling

The D & F must document either a "best interest" or an "urgent and compelling" determination, not both. The CO must give careful consideration to identifying the Agency interests supporting award or continued performance in light of a protest.

Although rare, a "best interest" finding is more commonly justified than an urgent and compelling finding. Typically, this finding is supported by an analysis of the Agency costs and/or program impacts that would result if the suspension remains in effect for up to 100 days (for GAO protests) or 35 days (for protests to the Agency), and a comparison of those costs/program impacts to those of overriding the stay. Ideally, the D & F should describe the Agency costs and/or program impacts of delayed performance under the new contract if the stay were to remain in effect. These Agency costs and/or program impacts should then be compared with the costs and/or program impacts the Agency would incur if the stay were lifted. A D & F which addresses relevant and substantial adverse costs and program impacts, to the extent that they exist, will present the strongest case to make an award or continue performance in light of a protest. However, if the adverse effects of a stay do not include both Agency costs and program impacts, it is still possible to override a stay if either substantial costs or strong program impacts exist.

An "urgent and compelling" finding, in contrast, is supported by facts indicating that the challenged contract is needed to satisfy urgent protections for public health and safety or national security, and that performance under the challenged contract is necessary before the GAO protest decision is expected to be rendered. An "urgent and compelling" finding focuses exclusively on the urgent need for a contract and is never appropriate for determining which of two available contracts (incumbent vs. successor) should be used. If an alternate vehicle exists, under which Agency requirements can be fulfilled, at least on a temporary basis while the protest is pending, COs shall not use an "urgent and compelling" justification for making award or continuing performance.

33.1.1.5.2 D & F Preparation and Documentation

The D & F requirements for pre-award and post-award Agency protests are set forth in FAR 33.103 (f)(1) and (3). The D & F requirements for pre-award and post-award GAO protests are set forth in FAR 33.104 (b)(1), (c)(2), and (d). Note that if a pre-award protest is pending at the GAO, a determination to proceed with contract award may be supported by an "urgent and compelling" finding only if the contract will be awarded within 30 days after the Head of the Contracting Activity signs the D & F.

If the program requests that an automatic contract suspension be overridden, the CO must prepare, with the assistance of the program office and Office of General Counsel (OGC), a D & F justifying a

decision to proceed with contract award or to continue contract performance. The D & F should be a succinct (generally not more than two pages in length), complete statement of the factual rationales for the override determination with references to appropriate supporting documentation. The supporting documentation may consist of written and oral communications (*e.g.*, e-mail messages, CO's dated notes of telephone conversations, or memoranda) from program office managers describing the impact continued suspension would have on their requirement. This supporting documentation may be vital should the D & F be challenged. A copy of all cited, supporting documentation should be included on the left-hand side of the D & F package submitted to the Head of the Contracting Activity (HCA) or the Division Director for signature. COs should also include, on the left-hand side of the folder, a copy of all FAR or EPAAR/EPAAG references cited in the D & F. Originals and hard copy printouts of electronic documents should be retained in the official contract file along with the signed, original D & F.

33.1.1.5.3 D & F Approval

Approval levels for D & Fs vary in accordance with the protest filing. If the protest is filed with the Agency, the determination to make an award or continue with performance will be made by the Division Director. The CO must obtain OGC's and the Competition Advocate's advisory review (sign-off on official yellow copy) prior to presenting the D & F to the Division Director or HCA.

Program office input and concurrence is required, although it is not necessary for the program to sign the official file copy. If the protest is filed with GAO, the determination to make award or continue with performance will be made by the HCA. In both cases, the CO must provide the D & F to OGC and the Competition Advocate to obtain an advisory review before presenting the D & F to the approving official for action. The Competition Advocate and the Division Directors are responsible for briefing the HCA on the status of Agency and GAO protests.

The D & F should be prepared, reviewed, and approved within two to three days following the filing of the protest. Delays in making a determination to proceed can undermine the arguments for either a "best interest" or an "urgent and compelling" case. When continued contract performance is critical and a protest is anticipated, it is advisable to draft a D & F before any protest is filed. Such anticipatory action would be helpful in meeting the short time frames in which to set forth strong, convincing arguments for continued performance. After the D & F has been approved by the Division Director (Agency protests) or HCA (GAO protests), COs must immediately notify the Competition Advocate and OGC. COs must follow instructions from the Competition Advocate and OGC about informing others outside of the Agency. When a protest has been made to the GAO, and the HCA has determined to make an award or proceed with performance, the Competition Advocate is responsible for notifying the Comptroller General that an override determination has been issued. As soon as the Comptroller General is notified of the determination, the authority to award the contract or to proceed with performance becomes effective. OGC is responsible for notifying the lawyers representing the protester, and any interveners, that a D & F has been issued.

33.1.1.5.4 D & F Outline

A recommended D & F outline is provided below to assist with preparing D & Fs. Additional relevant information may be included as necessary. In addition, sample D & Fs are included, as appendices to this Chapter, for your information.

FINDINGS

DO NOT discuss the protest allegations. DO NOT discuss the procurement history. With the exceptions of the protester and the contractor/successful offeror, DO NOT identify the offerors or bidders. DO NOT include technical scores/ratings or costs/prices.

1. Describe the Requirement and/or Award

- RFP number and contract number
- supplies or services rendered under contract
- type of contract
- socio-economic issues or concerns (if relevant)
- date of award
- dollar amount of award and options (if any)

2. Describe the Protest

- name of protester
- date and place (i.e., Agency, GAO) protest was filed
- indicate if the protester is the predecessor or incumbent contractor

3. Describe the Schedule for Contract Award or Post

- Award Events
- date performance of awarded contract began or will begin - date when contract will be awarded
- describe consequences if performance of challenged contract does not begin/continue For "best interest" D & F only:
- contrast costs/impacts of suspension with those of overriding the stay
- describe costs/program impacts if protest is granted and any portion of the procurement must be re-competed, or the challenged contract must be terminated for convenience. For "urgent and compelling" D & F only:
- state why the requirement is urgent (e.g., "life or limb")
- present an analysis indicating that only the challenged contract can be used to satisfy the requirement.

DETERMINATION

Conclude with "best interest" or "urgent and compelling" determination, which should be

substantially the same as one of the following:

Based on the findings set forth above and in accordance with FAR [*], I hereby determine that continued performance [or award, whichever applies] of contract number XXXX is in the Government's best interest because...[concisely state the reason(s).] Accordingly, after a copy of this determination is transmitted to the Comptroller General [if a post-award GAO protest], the contracting officer is authorized to continue performance of contract number XXXX as scheduled/immediately.

OR

Based on the findings set forth above and in accordance with FAR [*], it is urgent and compelling to continue performance [or award, whichever applies] because the Government would [describe briefly adverse consequences if the challenged contract award/performance does not proceed while the protest is pending]. Accordingly, after a copy of this determination is transmitted to the Comptroller General [if a GAO protest], the contracting officer is authorized to award/continue performance of contract XXXX as scheduled/immediately.

FAR References

	GAO	Agency
Before Award	**33.104 (b)(1)(i) and (ii) urgent & compelling + best interest or urgent Award w/in 30 days of D & F compelling	33.103 (f)(1) best interest or urgent & compelling
After Award	33.104 (c)(2)(i) or (ii) best interest or urgent & compelling	33.103 (f)(3) best interest or urgent & compelling

**A "best interest" determination does not apply to GAO pre-award protests.

APPENDIX 33.1.1-A
Protest Before Award
Basis for Award: Best Interest of the Government

U.S. Environmental Protection Agency
Determination and Findings for Contract Award In Light of Protest Before Award

FINDINGS

1. To fulfill an Office of Air and Radiation (OAR) requirement for air quality testing services in EPA Headquarter's facilities, technical services in support of the OAR's Air Quality Program, solicitation #123 was issued on January 2, 2000, under full and open competition. Company A was selected for award on March 28, 2000. Company B, one of seven unsuccessful offerors, filed a timely protest with the Agency on April 1, 2000. The challenged contract award is scheduled to be made on April 3, 2000, upon completion of internal administrative reviews. This solicitation has an estimated contract value of \$2,000,000, resulting in a cost-plus-fixed-fee contract with a base period and four option years.

[Note: A best interest determination does not apply to a GAO pre-award protest.]

2. Company B is the incumbent under the predecessor contract.

3. The option periods on the current contract have been exercised, and the period of performance will end on April 15, 2000. There are no Agency resources available to perform the necessary monitoring. The costs associated with a bridge contract to cover the period between current contract expiration and expected protest decision would be prohibitive. The short span of time over which to recoup start-up costs makes such an arrangement unattractive to potential offerors. Market research indicates that costs in the amount of \$600,000, will be incurred for a three month bridge contract period. (See Market Research summary, attached.) Inasmuch as EPA currently pays approximately \$100,000, per month for these services, these expenses represent a 100% increase in the current cost.

4. Likewise, a break in service, which will occur if the protest is not decided by April 15, is not a viable option. Upon resumption of services following a break, substantial re-review, analysis, and evaluation of air quality will be necessary to establish a new baseline. Even a short break in service may cause the data collected before and after the break to be unreliable, and several month's performance under a new system would be necessary to restore data quality. Costs associated with retesting and the establishment of a new baseline following a break in service is estimated to exceed \$400,000.

5. In the event the protest is sustained, and EPA must terminate the contract, we estimate Acquisition termination costs to be negligible, as the air monitoring equipment is Government-owned, and there is little capital investment on the part of the contractor. EPA will be liable for payment for services received, and for approximately \$8,000, in other costs associated with termination, if the contract is

terminated within 60 days of award. Such costs are a fraction of the costs the Agency will incur if award is not made.

DETERMINATION

Based on the findings set forth above and in accordance with FAR 33.103 (f)(1), award of contract under solicitation #123 is in the best interests of the Government because it precludes the quality of the data collected from being adversely impacted by a break in performance, and because other options for providing this critical monitoring are cost prohibitive. Accordingly, the contracting officer is authorized to award the contract.

Division Director (Agency Level Protest) Date

APPENDIX 33.1.1-B
Protest Before Award
Basis for Award: Urgent and Compelling Circumstances

U.S. Environmental Protection Agency
Determination and Findings for Contract Award In Light of Protest Before Award

FINDINGS

1. The Office of Air and Radiation (OAR) submitted a requirement to the Headquarters Procurement Operation Division's Administrative Contract Service Center to award a contract for technical services in support of the OAR's Air Quality Program. This requirement provides for air testing in the U.S. Capitol Building and the Senate and House office buildings in Washington, D.C. Following the recent anthrax contaminations which have occurred in these buildings, and the likelihood that the specified buildings will remain terrorist targets, EPA has been charged with continuous air monitoring. Monitoring will permit early detection of any foreign airborne pathogens. To fulfill this requirement, solicitation #123 was issued on January 2, 2000, under a full and open competition. The award of solicitation #123 is anticipated on April 15, 2000, resulting in a fixed price contract with (base period plus four option years) an estimated value of \$1,000,000. As of this date, April 3, 2000, a selection has been made, and the administrative steps necessary to make the award have been initiated.

2. Company A is the selected awardee. Company B filed a timely protest to the Agency [or GAO] on April 1, 2000.

[NOTE: If this is a GAO pre-award protest, FAR 33.104(b)(1)(i) and (ii) provides that the contract may be awarded while the protest is pending only if the award is justified by an urgent and compelling determination, and the award can be made within 30 days of D & F approval. Language similar to the following may also be used to support an urgent and compelling decision when the protest is at the Agency level.]

3. Solicitation #123 must be awarded within the current schedule to ensure air monitoring at highly sensitive Federal sites, and to permit EPA to perform its mission. There are no existing contract vehicles available under which to perform these services. Likewise, EPA does not have the internal resources to perform these services. The air monitoring services to be performed under the contract are an integral part of a complex air monitoring program and significantly contribute to EPA's ability to detect airborne biochemical terrorist attacks. The Office of Homeland Security has recently elevated the probability of terrorist attacks being carried out through contamination of the air, (see attached delegation from the Secretary for Homeland Security) and in order for EPA to fulfill its anti-terrorist mission, it is imperative that the contract be awarded, pending GAO disposition of the protest. EPA must take measures to ensure the health and safety of EPA employees, the public, and Government officials.

DETERMINATION

Award of solicitation #123 is urgent and compelling, because the Government would be defenseless against a biological airborne attack at the U.S. Capital and the Congressional office buildings if the challenged contract award does not proceed while the protest is pending. As provided in FAR 33.103(f)(1), the contracting officer is authorized to award solicitation number #123 as scheduled, after a copy of this determination is transmitted to the Comptroller General [if GAO protest].

(To be signed by Division Director if Agency Level Protest)
(To be signed by OAM Director of GAO Protest)

Date

APPENDIX 33.1.1-C
Protest After Award
Basis for Continuation: Best Interest of the Government

U.S. Environmental Protection Agency
Determination and Findings for Continued Contract Performance in
Light of a Protest After Award

FINDINGS

1. The Office Administrative Services (OAS) submitted a requirement to the Headquarters Procurement Operation Division's Administrative Contract Service Center to award a contract for technical support services to conduct background investigations of contractor employees through electronic searches of Government databases. To fulfill this requirement, solicitation #345 was issued on March 5, 2004, under a full and open competition.
2. On July 10, 2004, Company ABC was awarded a cost-plus-fixed-fee contract (contract #68W-2002), consisting of a one year base period plus four option years with a contract value of \$5,000,000. Prior to award of this contract, EPA utilized the services of the Office of Personnel Management (OPM) to perform background checks. OPM provided unsatisfactory service that was unduly expensive and did not meet EPA's time requirements for completion of the checks.
3. On July 15, 2004 Company XYZ filed a timely protest to [the Agency or GAO, as appropriate], challenging the contract award. As required by [FAR 33.103(f)(3) for Agency protests, FAR 33.104(c)(2) for GAO protests] the Contracting Officer immediately instructed Company ABC to stop work under contract 68-W-2000. The protest is expected to be decided within [100 days if GAO, or 35 days if Agency].
4. The Agency has ongoing needs for background checks. Multiple program offices were utilizing the services in contract #68-W-2002. In the 5 days since award, seven program offices have already placed orders for a total of 800 background checks. Turnaround time on each individual check is 10 days in accordance with contract terms. Hence, a substantial number of background checks needs to be completed during the period that the protest is under consideration.
5. If the suspension is continued, the Agency would be forced to utilize the services of OPM to conduct background checks, resulting in extra costs and delays. The cost of an OPM check is 50% higher than the contract price (\$120 vice \$80), and the time required to conduct a single check is 90% longer than the contract delivery requirements (90 days vice 10 days). Because approximately 2,000 background checks are anticipated within the next 35 days, use of contract 68-W-2002 in lieu of OPM, will result in cost savings of \$80,000. The time delays associated with OPM performance of background checks would cause the Agency to be under-prepared to respond to

an emergency situation. Therefore, the use of contract #68-W-2002 will save the Government considerable time and money.

6. In the event the protest is sustained, and EPA must terminate the contract, we estimate termination costs to be negligible, as there is little capital investment on the part of the contractor. EPA will be liable for payment for services received, and for approximately \$8,000, in other costs associated with termination, if the contract is terminated within 60 days of award. Such costs are a fraction of the costs the Agency will incur if award is not made.

DETERMINATION

Based on the findings set forth above, and in accordance with [either FAR 33.103(f)(3) for Agency protests or FAR 33.104 (c)(2) for GAO protests], I hereby determine that continued performance of contract number 68-W-2002 is in the best interests of the Government because it is the most cost effective solution and also precludes unacceptable delays that would cause the Agency to be ill-prepared for an emergency. Accordingly, after a copy of this determination is transmitted to the Comptroller General, [if GAO protest] the contracting officer is authorized to continue performance of contract number 68-W-2002 immediately.

(To be signed by Division Director if Agency Level Protest)
(To be signed by OAM Director if GAO Protest)

Date

APPENDIX 32.1.1-D**Protest After Award****Basis for Continuation: Urgent and Compelling Circumstances****U.S. Environmental Protection Agency****Determination and Findings for Continued Contract Performance in
Light of a Protest After Award****FINDINGS**

1. Contract #68-C-2004 provides security guard services at the Environmental Protection Agency (EPA), Research Triangle Park (RTP), NC and Chapel Hill, NC. This firm-fixed-price contract, in the amount of \$12 million, was awarded on September 28, 2003 to Eagle Technologies, Incorporated, located in Lanham, MD. The period of performance began on October 1, 2003.
2. A timely protest was filed with [the Agency or GAO as appropriate] on October 3, 2003, by the incumbent contractor, Myers Investigative & Security Services, Inc.
3. Due to the criticality of the security guard services at a Federal facility, the services cannot be suspended or terminated. The services provided by this contract are guard services, 24/7, for the entire North Carolina campus. The contract includes services to protect the \$270M facility and over 1,200 Federal employees and contractors.
4. Since September 11, 2001, security at Federal facilities has been increasingly stringent and compelling. The EPA facility covered by this procurement is the largest federally-owned facility outside of Washington, DC. Additionally, because EPA's National Computer Center is located in the North Carolina facility, the security rating for the entire campus is Level 4. To put this into perspective, the Pentagon is a Level 5 facility, only one level higher than EPA's North Carolina facility. In FY2002, EPA conducted a security audit on the North Carolina facility. Based on recommendations in the audit report, the statement of work for this contract was crafted to reflect additional security measures.
5. To suspend performance on this contract would put buildings, research projects, and the entire computer infrastructure at great risk and would expose personnel to the risk of potential loss of life or limb. Additionally, EPA shares the campus with another Government agency, the National Institute for Environmental Health Sciences, which is also staffed with security guards 24/7. If EPA's facilities were not secure, the National Institute for Environmental Health Sciences would be compromised because an access road is shared and the only separation is a lake with a walking path.
6. There are no other alternatives available to provide these services. There are no EPA employees trained or licensed to provide this service and there are currently no available Agency contracts with the capacity or the means to provide the number of armed guards needed at the North Carolina facility on an immediate basis. There is a GSA Schedule that provides Security Guard Services, Schedule 84, which was examined for possible use. However, this acquisition requires the company to be licensed by the state of North Carolina to provide private protective services. Unfortunately, the schedule contractor does not already possess such a license and to obtain one which would cause an even longer delay.

Therefore, the GSA schedule would not allow for mobilization of guards immediately and is not a viable alternative.

DETERMINATION

Based on the findings set forth above, and in accordance with FAR 33.104(c)(2)(ii), urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision. Therefore, performance must continue on contract number 68-C-2004 for security guard services at EPA's North Carolina facility, notwithstanding the protest. Accordingly, after a copy of this determination is transmitted to the Comptroller General, the contracting officer is authorized to continue performance of the contract immediately.

(To be signed by Division Director if Agency Level Protest)
(To be signed by OAM Director if GAO Protest)

Date

EPAAG

Section 33.1 - Protests

Subsection 33.1.2 Independent Review of Contract Officer Protest Decision

33.1.2.1 Purpose.

This subsection provides guidance on obtaining an independent review by the Head of the Contracting Activity (HCA) of a contracting officer's (CO) determination or decision on an agency protest.

33.1.2.2 Background.

Pursuant to Federal Acquisition Regulation (FAR) 33.103, *Protests to the Agency*, section (d)(4) references agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer, and the solicitations should advise potential bidders and offerors that this review is available. Further, EPAAR 1552.233-70 requires that contracting officers include a clause in all contracts prescribing agency protest and independent review request procedures.

33.1.2.3 Authority/Applicability.

This section covers protests filed under Executive Order 12979, Agency Procurement Protests, and FAR Subpart 33.103.

33.1.2.4 Definitions [Reserved]

33.1.2.5 Policy

33.1.2.5.1 Independent Review of Contracting Officer's Decision on an Agency Protest

A protestor may request an independent review of a CO's adverse decision of an agency protest from the HCA only as an appeal of a CO decision on a protest within 10 calendar days after receipt of the CO's decision on the agency level protest. The request will be reviewed by the HCA with the assistance of OAM's Policy, Training, and Oversight Division Director (PTOD-DD). The PTOD-DD will be responsible for obtaining the official contract file, Agency Protest Decision Letter, and any relevant information necessary in developing the recommendation to the HCA. The PTOD-DD will review the documentation, make a written recommendation, and obtain Office of General Counsel (OGC) review prior to providing the recommendation to the HCA. Upon receipt of the PTOD-DD's recommendation and any needed supporting documentation, the HCA will then prepare a separate memorandum capturing his/her findings and the final determination letter that will be sent

to the protestor.

If the HCA upholds the CO's decision on a protest, the final determination letter will be sent to the protestor, with a copy placed in the contract file. However, if the HCA does not concur with the CO's decision, the CO will develop a corrective action plan that addresses the protestor's concerns and the HCA's findings. Once developed, the corrective action plan will be reviewed by the PTOD Director, OGC, and the HCA for final approval. Key elements of the corrective action plan will be included with the final determination letter to the protestor. A copy of the corrective action plan will be placed in the contract file with the HCA final determination letter.

Section 33.2 – Disputes and Appeals

Section 33.2.1 - Alternative Dispute Resolution (November 2006)

This subsection was previously Unit 33.1 of the Acquisition Handbook.

33.2.1.1 Purpose.

This subsection establishes policy and guidance for the use of Alternative Dispute Resolution (ADR) techniques in connection with Agency-level protests, protests filed with the General Accounting Office (GAO), and disputes filed in accordance with the Contract Disputes Act (CDA) of 1978, 41 U.S.C. " 601-613.

33.2.1.2 Background.

The Administrative Dispute Resolution Act of 1996 (the ADRA), P.L. 104-320, 5 U.S.C. " 551-584, was implemented to encourage the voluntary use of ADR as an alternative to formal litigation. EPA's Policy on ADR has adopted the definition of ADR in the ADRA: Any procedure that is used, in lieu of an adjudication . . . to resolve issues in controversy including but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, and use of ombuds, or any combination thereof . . . @ 5 U.S.C. ' 571(3). ADR refers collectively to a broad range of flexible procedures designed to resolve disputes at less cost, more efficiently and often, with greater satisfaction for the parties involved in the dispute than is often the case with formal litigation.

To encourage the use of ADR within the Government contracts arena, the ADRA amended the Contracts Disputes act to provide that A. . . a contractor and a contracting officer may use any alternative means of dispute resolution . . . or other mutually agreeable procedures, for resolving claims.@ 41 U.S.C. ' 606(d). Similarly, the Federal Acquisition Regulation (FAR 33.204) provision implementing the ADRA states that it is A[t]he Government's policy to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level . . . [and] [a]gencies are encouraged to use ADR procedures to the maximum extent practicable.@ In addition, Executive Order 12979, entitled AAgency Procurement Protests@ and signed by the President on October 25, 1995, urges agencies to provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests, including . . . the use of alternative dispute resolution techniques[.]@ GAO has also indicated its willingness to make greater use of ADR techniques as an alternative to its formal bid protest procedures. See GAO letter to Agency Senior Procurement Executives, dated September 23, 1996.

EPA published its Policy on Alternative Dispute Resolution, 65 Fed. Reg. 81858-60, on December 27, 2000. The Agency has also established a Conflict Prevention and Resolution Center (CPRC) in the Office of General Counsel (OGC) to provide ADR services to the entire Agency. The Agency's Dispute Resolution Specialist, designated under the ADRA, is the head of the CPRC.

This section was originally issued as Procurement Policy Notice (PPN) No. 97-02 on September 25, 1997, from Betty L. Bailey, Director of the Office of Acquisition Management to OAM Division Directors, Regional Contracting Officer Supervisors, and Howard Corcoran, OGC.

33.2.1.3 Authority/Applicability.

The authority for this section is FAR Part 33.204, 33.214, and the Administrative Dispute Resolution Act of 1996 (the ADRA), P.L. 104-320, 5 U.S.C. 551-584, and Executive Order 12979. With regards to applicability to specific instances, see section 33.2.1.5.1.

33.2.1.4 Definitions.

The ADRA defines ADR as any procedure that is used, in lieu of an adjudication . . . to resolve issues in controversy including but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, and use of ombuds, or any combination thereof . . .@ (5 U.S.C. ' 571(3)).

33.2.1.5 Policy.

It is Agency policy to make maximum use of ADR as an alternative to formal litigation where it appears that such an approach will facilitate dispute resolution, save time or money, or would be in the best interests of the Agency. Every protest or dispute is a potential candidate for ADR including issues in controversy which are not formal disputes. ADR is an entirely voluntary process; however, if a party rejects the other's request for ADR proceedings, both CDA and FAR 33.214(b) require the rejecting party to provide a written explanation for its rejection of ADR. Moreover, because the goal of ADR is to resolve disputes at the earliest stage feasible, at the lowest appropriate organizational level, by the fastest and least expensive method possible, the Contracting Officer (CO) will be a key figure in deciding whether a particular protest or dispute is appropriate for ADR.

Section 33.2.1.5.1 is a listing of factors for determining use of ADR. Section 33.2.1.5.2 is a listing of ADR techniques. Appendix 33.2.1-A to this section is an ADR acknowledgment letter that COs may use after receipt of a protest or claim to advise contractors of the ADR alternative to litigation.

33.2.1.5.1 Factors for Determining Use of ADR

FAR 33.214(a) addresses four essential elements of ADR:

- 1) Existence of an issue in controversy (i.e., there need not yet be a formal dispute);
- 2) A voluntary election by both parties to participate in the ADR process;
- 3) An agreement on alternative procedures and terms to be used in lieu of formal litigation;

- 4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy.

If the above elements exist, the CO and the contractor must determine whether an alternative method of resolving the issue or dispute is preferable to formal litigation. FAR 33.214(a) states, The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Using an ADR technique requires the unanimous consent of all the parties; if there are numerous parties involved, the likelihood of such agreement may be reduced. Note that ADR is not always an appropriate substitute for litigation, and COs should consider the following when making such a determination:

(a) Factors favoring the use of ADR:

- (1) The law regarding the determinative legal issues is well-settled.
- (2) The dispute is primarily factual.
- (3) Each side's position has merit.
- (4) The cost of formal litigation could be excessive.
- (5) Extensive discovery is not necessary.
- (6) The parties are genuinely interested in settling the dispute but personality conflicts are adversely affecting settlement discussions.
- (7) ADR could speed anticipated settlement by limiting the exchange of information and time needed for resolution of the matter.
- (8) There is a desire to maintain a continuing amicable relationship between the parties.
- (9) There is a need to avoid adverse precedent, especially if the case might be tried in a hostile forum or before an unsympathetic judge.
- (10) There is a need for problem-solving or developing creative alternatives and flexibility in shaping relief.

(b) Factors cautioning against the use of ADR (See 5 U.S.C. '572(b)):

- (1) The dispute is primarily over issues of law rather than fact.
- (2) A decision with precedential value is needed.

- (3) A significant policy question is involved.
- (4) A public record of the proceeding is desired.
- (5) The outcome will significantly affect nonparties to the dispute.
- (6) ADR will be more expensive and time consuming than formal litigation.
- (7) The dispute involves a willful or criminal violation of law.
- (8) If the contractor claim or the Government claim involves fraud, ADR may not be used.
- (9) The dispute is likely to be settled and ADR is unnecessary.
- (10) The other side's case is without merit so there is no basis for compromising the government's position.
- (11) The Agency must maintain continuing jurisdiction over the matter and have the right to alter the resolution as circumstances demand.

The above factors are not exhaustive and there are a number of legal considerations to be addressed when determining whether ADR is appropriate. Accordingly, the Office of General Counsel (OGC) should be consulted whenever a determination regarding the use of ADR is being made.

If ADR is utilized, an ADR agreement needs to be entered into which will cover the basic requirements for the ADR procedure. Aside from the logistics of the ADR sessions, the contracts and issues involved, and how the costs will be allocated, the agreement must detail the provision for a neutral to be appointed, define the neutral's role, and the extent of future disqualification of the neutral in any subsequent litigation. The confidentiality needs and concerns of the parties must be discussed early in every ADR process. In most cases when a common understanding is reached on confidentiality, this understanding should be recorded in a written confidentiality agreement.

There are numerous sources within the Government and the private sector to obtain the services of a neutral. The ADRA expressly authorizes agencies to (1) enter into contracts for the services of neutrals and (2) use the services of one or more employees of other agencies to serve as neutrals in ADR. The ADRA amends the Competition in Contracting Act, 41 U.S.C. 253(c)(3), to allow other than full and open competition when acquiring the services of an expert or neutral. Unless the procurement is a micropurchase, the contracts within the simplified acquisition threshold are reserved exclusively for small business concerns and contracting officers may solicit from only one source, if the contracting officer determines that only one source is reasonably available.

33.2.1.5.2 Required Actions

To achieve the Agency's goal of ADR utilization, every protest and dispute should be evaluated by the CO, in conjunction with OGC, for possible application of ADR techniques. While there are a variety of ADR techniques, the following have proven to be effective within the Government contracts arena:

- (a) Negotiation - Informal negotiation by parties, often alternates from the original parties, to reach a mutually acceptable resolution of the issues, without the assistance of a neutral third party.
- (b) Mediation - An extremely flexible non-binding negotiation-based process whereby a neutral third party (mediator) assists the parties in reaching a negotiated settlement. The mediator helps the parties communicate, negotiate, and reach agreements and settlements, but is not empowered to render a decision.
- (c) Neutral Expert Fact Finding - The investigation of issues by a neutral with specialized subject matter expertise to gather information from all sides and prepare a summary of the key issues. A fact finder draws upon information provided by both parties, as well as upon additional research, to recommend resolution for outstanding issues.
- (d) Settlement Judge - A non binding ADR technique employed by the boards of contract appeals to achieve a frank and in depth discussion of the strengths/weaknesses of each party's position with a sitting judge.
- (e) Mini-trial - An attorney for each party presents an abbreviated version of that side's case. The case is not heard by a judge, but by high-level representatives from both sides who possess settlement authority. A mini-trial may be presided over by these representatives with or without a neutral advisor, who can regulate the information exchange. Following the presentations, the parties' representatives meet, with or without the neutral, to negotiate a settlement.
- (f) Arbitration - A third party neutral arbitrator reviews evidence, hears arguments, and issues a decision. EPA right now may only use non-binding arbitration. Currently, EPA has no authority to resolve issues through binding arbitration.

The foregoing is only a partial listing of ADR techniques. COs should be willing to consider any ADR procedure, or combination of procedures, that would promote the mutually satisfactory resolution of a protest or dispute. OGC should be consulted by the CO when such considerations are being made. Note that there are excellent Government resources available to parties seeking to use ADR. These resources include agency boards of contract appeals which have established a reciprocal sharing of neutrals arrangement. GAO provides ADR services for protests which include assistance prior to protest submission when GAO may comment upon the perceived strengths and weaknesses in each party's argument. If a protest is filed with GAO, outcome prediction is available in some cases.

CHAPTER 35 – RESEARCH AND DEVELOPMENT CONTRACTING

Subsection 35.0.100 – Life Sciences Dual Use Research of Concern (DURC) and Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC) Contracting (May 2018)

35.0.100.1 Purpose.

The purpose of this subsection is to provide Agency policy regarding solicitations and contracts involving Life Sciences Dual Use Research of Concern (DURC) and Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC).

35.0.100.2 Background.

- (a) Life sciences research is essential to scientific advances in public health and safety, agriculture (including crops and other plants and animals), the environment, materiel (including food, water, supplies, and equipment), and national security. Certain types of research conducted for legitimate purposes can be used for both benevolent and harmful purposes. This type of research is referred to as “Dual Use Research”.
- (b) On July 2, 2010, President Obama issued [*Executive Order 13546 Optimizing the Security of Biological Select Agents and Toxins in the United States*](#). In 2011, two studies of the avian flu virus, funded by the National Institute of Health, raised national security concerns when researchers tried to publish their results, which included methods for making the virus more transmissible. This research had the potential to meet the definition of dual use research of concern. In response, the U.S. Government issued two government-wide policies for the oversight of life sciences research involving the avian flu virus and 14 other high consequence agents and toxins: the [DURC](#) and [iDURC](#) policies.
- (c) In compliance with these policies, it is necessary for EPA to identify and mitigate risks produced by certain life sciences research which may be misapplied in ways that pose significant threats. Risks may be in the form of knowledge, information, products or technologies produced by the research. These risks may produce significant threats that have broad, potential consequences to public health and safety, agricultural crops and other plants, animals, the environment, materiel, or national security. While the Primary Investigator (PI) and the Contracting Officer’s Representative (COR) will be the subject matter experts, the Contracting Officer (CO) and Contract Specialist (CS) will be required to assist them to ensure the contractor complies with iDURC Policy requirements and maintains the highest standards for biosecurity while conducting and communicating EPA-funded life sciences research.

35.0.100.3 Authority/Applicability.

This subsection is issued in accordance with FAR 1.301(a), 1.401(f), and EPA Delegations Manual Chapter 1-2. Additional authority for this policy is [EPA Order 1000.19](#).

35.0.100.4 Definitions.

Dual use research - research conducted for legitimate purposes that generates knowledge, information, technologies, and/or products that could be utilized for both benevolent and harmful purposes.

Dual use research of concern (DURC) - a subset of dual use research defined as: life sciences research that, based on current understanding, can be reasonably anticipated to provide knowledge, information, products, or technologies that could be directly misapplied to pose a significant threat with broad potential consequences to public health and safety, agricultural crops and other plants, animals, the environment, materiel (including food, water, supplies, or material of any kind), or national security.

Institution - any government agency (Federal, State, tribal, or local), academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity conducting research.

Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC) – oversight of any institution involving DURC where oversight includes policies, practices, and procedures to ensure DURC is identified and risk mitigation measures are implemented, where applicable.

Life Sciences - pertains to living organisms (e.g., microbes, human beings, animals, and plants) and their products, including all disciplines and methodologies of biology such as aerobiology, agricultural science, plant science, animal science, bioinformatics, genomics, proteomics, microbiology, synthetic biology, virology, molecular biology, environmental science, public health, modeling, engineering of living systems, and all applications of the biological sciences. The term is meant to encompass the diverse approaches to understanding life at the level of ecosystems, populations, organisms, organs, tissues, cells, and molecules.

Life Sciences Research - based on the definition of research at 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel.

Biosecurity - Biosecurity is one of the three components of bio risk management, which ensures the safe use and security of biological materials in laboratories. Biosecurity focuses on protecting biological agents from theft, loss, or misuse. Laboratory biosecurity refers to the protection, control of, and accountability for high-consequence biological agents and toxins, and critical relevant biological materials and information within laboratories to prevent unauthorized possession, loss, theft, misuse, diversion, and intentional release.

35.0.100.5 Policy.

(a) This policy is applicable to all life sciences research acquisitions, regardless of the dollar value, if it involves:

- ❖ any of the 15 agents or toxins (listed in the iDURC Policy),
- ❖ one or more of the seven categories of experiments (listed in the iDURC Policy, and
- ❖ meets the definition of DURC (see 35.0.100.4 Definitions.)

(1) The 15 agents and toxins are:

- Avian influenza virus (highly pathogenic)
- *Bacillus anthracis*
- Botulinum neurotoxin5
- *Burkholderia mallei*
- *Burkholderia pseudomallei*
- Ebola virus
- Foot-and-mouth disease virus
- *Francisella tularensis*
- Marburg virus
- Reconstructed 1918 Influenza virus
- Rinderpest virus
- Toxin-producing strains of *Clostridium botulinum*
- Variola major virus
- Variola minor virus
- *Yersinia pestis*

(2) The seven categories of experiments are those that:

- Enhance the harmful consequences of the agent or toxin;
- Disrupt immunity or the effectiveness of an immunization against the agent or toxin without clinical or agricultural justification;
- Confer to the agent or toxin resistance to clinically or agriculturally useful prophylactic or therapeutic interventions against that agent or toxin or facilitates their ability to evade detection methodologies;
- Increase the stability, transmissibility, or the ability to disseminate the agent or toxin;
- Alter the host range or tropism of the agent or toxin;
- Enhance the susceptibility of a host population to the agent or toxin; or
- Generate or reconstitutes an eradicated or extinct agent or toxin listed above.

(b) The PI and COR are considered the experts and should notify the CO if any requirement involves DURC/iDURC. However, the CO should also review the requirement to provide a second check for potential DURC/iDURC applicability.

(c) Upon receiving an Advance Acquisition Plan (APP), bilateral contract modification request, or other appropriate request from the PI/COR that includes notification that DURC/iDURC compliance by the contractor is/may be required, the CO/CS should insert appropriate language into the initial solicitation (see [EPAAR 1552.235-81](#)) and resultant contract (see

[EPAAR 1552.235-82](#)) as per [EPAAR 1535.007](#) paragraph (c) and [1535.007-70](#) paragraph (h), respectively.

- (d) The CO/CS must take the training “Life Sciences Research Dual Use Research of Concern (DURC)” through EPA [Skillport/eLearning](#) within 30 days after notification or discovery that DURC/iDURC may be involved in the requirement or contract. A copy of the training completion certificate shall be retained as part of the contract file.

Subsection 37.1.3 - Personal Services of Students and Recent Graduates (September 2014)

This subsection was previously Section 37.2 of the Contracts Management Manual.

37.1.3.1 Purpose.

The purpose of this section is to establish policy and procedures for Office of Research and Development (ORD) authority to either contract *directly* with individual students or *indirectly* with institutions or nonprofit organizations, for the temporary or intermittent personal services of students or recent graduates.

37.1.3.2 Background.

This section was originally issued on June 9, 2004, to provide policy and procedures relating to Contracting for Temporary or Intermittent Personal Services of Students or Recent Graduates. ORD is granted Personal Services contracting authority by Congress in the Consolidated Appropriation Resolution for 2003 (P.L. 108-7). First, the authority allows ORD to contract directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent personal services of students or recent graduates. The intent of this authority is to provide an opportunity for students seeking hands on experience within ORD in support of our mission. This opportunity is opened to individuals at least 18 years old who are enrolled in a degree program at a recognized educational institution or a recent graduate (within one year of graduation for BS and MS degrees and two years of graduation for post docs). Students or recent graduates can work up to 5 years (two year base period) under Personal Services Contracts, in various laboratories, research centers and offices working side-by-side with EPA mentors and/or scientists. Although students or recent graduates would be working as a contractor under Personal Services contracts, they would be considered employees for the purposes of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but are not considered to be Federal employees for any other purposes.

Second, it is permissible for ORD to contract either directly or indirectly to obtain student services. If the direct contracting method is selected (contract w/individual student), COs would continue to use procedures established in the policy. When indirectly obtaining student services, the students can be employees of the institutions or nonprofit organizations under a contract. In order to have a personal services relationship with contractor employees, the contract must explicitly state that the contractor agrees to a personal services relationship between its employee(s) and ORD personnel. In addition, the contractor should also state “the contractor understands and agrees that its employees under the ORD contract will be considered federal employees for compensation for travel, work injuries and tort claims as set forth in the statutory authority and all applicable clauses will be included in the contract.” This is not to be confused with personal service relationships with students or recent graduates who are considered subcontractors to an ORD contractor. EPA has privity of contract with its prime contractor only and not with any subcontractors.

37.1.3.3 Authority/Applicability.

The Consolidated Appropriation Resolution for 2003 (P.L. 108-7) included the following authority for the EPA Office of Research and Development to contract for the temporary or intermittent personal services of students or recent graduates:

"Provided, that the Office of Research and Development (ORD) of the Environmental Protection Agency may hereafter contract directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent personal services of students or recent graduates, who shall be considered employees for the purposes of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes."

37.1.3.4 Definitions.

- (a) Contracting Officer's Representative (COR) - the COR is the primary representative of the contracting officer (CO). The COR may be either an EPA employee or, as appropriate, another Federal Agency employee, appointed by the CO, who possesses the necessary knowledge, skills, and abilities to perform pre-award and/or post-award functions. The COR is responsible for technical direction and certifying that services were received and accepted. CORs do not have the authority to issue any technical direction which changes or modifies the scope of work, or alters the period of performance of the contract. The COR must comply with the required acquisition training requirements listed in Section 1.6 of the EPA Acquisition Guide (EPAAG). The COR may also serve as a mentor and continue to perform their pre-award and post-award contract functions.
- (b) Mentor - the Mentor is a Federal employee, proficient in the subject matter related to the student's field of study, which provides day-to-day direction, coaches, advises, counsels and provides guidance and support to the student or recent graduate in the performance of their work. Mentors review the student's or recent graduate's work and provide input to the COR on the quality and quantity of this work. Unless the mentor is also the COR, mentors will *not* perform acquisition functions, such as approval of invoices, and therefore, are *not* required to comply with the COR training requirements as stated in EPAAG Section 1.6. The Mentor should normally be collocated with the student so as to be readily available to the student contractor.
- (c) Recent Graduate - An individual, at least 18 years of age, who has graduated with a degree from a college or university within the last two years.
- (d) Student - An individual, at least 18 years of age, who is enrolled, in good standing, in a degree program (actively seeking a degree) at a recognized educational institution. A student is not required to carry a full course load, as long as the individual is a bona fide student, not merely someone who signed up for a class in order to work under these contract arrangements.
- (e) Field of Study – College or university course work related to requirements of the Statement of Work (SOW) that will provide a benefit to the student thru hands-on work experiences.

37.1.3.5 Policy.

ORD's authority is to contract for the temporary or intermittent personal services of students or recent graduates, who are at least 18 years of age, for up to 60 months, or five years, of total service, including options. Any period of performance, base or option period, may not exceed 24 months or two years, in order to coincide with ORD's appropriations period. Upon expiration of student services contract, that requirement must be re-competed following the acquisition procedures established under Section 37.1.3.6, in order to continue fulfilling this requirement under the student services authority. The student or recent graduate may not compete again for the same requirement they have previously held, but may compete for any other student service requirement for which they are qualified and otherwise eligible. There is no maximum time limitation on the number of years that a requirement may be fulfilled under the student service authority. Likewise, there is no limitation on the number of years a particular student may perform under student service contracts; however, a student may not hold a contract for the same requirement more than 60 months. Please note that the limitations placed on the individual student are not applicable to indirect contracts (e.g., educational institutions, nonprofit organizations, etc.) which held a prior award in excess of the simplified acquisition threshold. Institutions/organizations that have previously held indirect contracts may compete again for the same requirement.

The purpose of this authority is to provide the students or recent graduates with hands-on work experience in their field of study. It is *not* to be used as an alternative to hiring Federal employees to perform continuing service needs or mission critical work.

EPA's statutory authority allows for contracting with individual students or recent graduates, or for contracting with institutions (such as colleges and universities) or other nonprofit organizations (such as consortiums); for the personal services of students or recent graduates.

The structure of the contract vehicle may differ should a direct contract be awarded to an individual versus an indirect award to an institution for things such as payment, terms and conditions, and appropriate clauses. (See 37.1.3.6)

Students and recent graduates under these personal services contracts are not Federal employees (except as provided below) and, therefore, are not eligible for: health insurance, life insurance, retirement plans, monetary awards, leave or Government employees' training. Students and recent graduates may not be used to perform inherently governmental functions.

Students or recent graduate travel is authorized, arranged and paid for the same as would be done for employee travel. They are eligible for Government airfares and hotel discounts on official travel.

Students or recent graduates injured on the job are eligible for Workers Compensation at the Government's expense (via the Department of Labor) the same as a Federal employee. They are also included in workplace safety and injury prevention programs; protective gear, medical monitoring, and inoculations should be provided to students and recent graduates.

Consistent with the law, the Government may be sued for damages or injuries to third parties caused by these students or recent graduates in the conduct of EPA activities. This does not mean

that the students or recent graduates are indemnified from all liability. They are not entirely immune personally from lawsuits just as Federal employees are not. Properly licensed students or recent graduates may be permitted to drive Government vehicles, if required to do so by the statement of work.

The acquisition of these personal services may be implemented using simplified acquisition procedures or negotiated acquisition procedures, competitively or noncompetitively, if justified.

ORD will notify OAM, the Acquisition Policy and Training Service Center (APTSC), immediately if this statutory authority is rescinded or changed and provide appropriate documentation to support the cancellation or revision to the authority.

37.1.3.6 Acquisition Procedures and Provisions

37.1.3.6.1 Procurement Initiation

The ORD requiring organization will submit, to the servicing OAM Procurement Operations Division, the following:

- (a) Completed Procurement Request, with approvals and funding
- (b) Announcement for student or recent graduate services contracts
- (c) Statement of work (SOW)
- (d) Evaluation Factors
- (e) List of recommended institutions and points of contact where the announcement should be posted

37.1.3.6.2 Announcement for Student or Recent Graduate Services Contracts

ORD will prepare an announcement for student or recent graduate services contracts (Appendix 37.1.3-A), which will serve as the EPA solicitation for simplified acquisitions. Announcements will include the following information:

- (a) SOW
- (b) Needed knowledge, skills, work experience and/or academic education
- (c) Estimate of the number of hours of work to be performed
- (d) Approximate start and end dates
- (e) Evaluation factors to be used to evaluate resumes
- (f) Hourly rate applicable to specified education level and location
- (g) Principal duty station location
- (h) Resume requirements
- (i) Deadline and address for submission of resumes
- (j) Late proposal instructions
- (k) Number of awards projected

In the case of an anticipated contract to a college, university, or other Organization, a synopsis must be posted in FedBizOpps pursuant to FAR Part 5.2.

37.1.3.6.3 Statement of Work

ORD will develop the SOW (Appendix 37.1.3-B) and transmit it, together with the Announcement described in 37.1.3.6.2 above, to the CO to initiate the procurement process. The SOW is the written description of the services that the Government requires of the contractor (student) and contains, as a minimum, the following information:

- (a) Brief description of Agency and Office mission
- (b) Project description
- (c) Description of work required
- (d) Quality assurance requirements
- (e) Description of working conditions
- (f) Anticipated travel requirements, if any

The CO will include the SOW in the announcement during the solicitation process, and it will be made part of the award document.

37.1.3.6.4 Competition

All contracting opportunities will comply with applicable competitive procurement procedures and policies, with factors other than price being significantly more important than price as the basis for award.

The posting of the announcements will be sufficient to comply with competitive procurement procedures. When the contract value is expected to exceed \$10,000, the CO will post the announcement in a public place(s). The posting must be accomplished by the day the solicitation is issued and be open for 10 days, or until the quotations are received, whichever is later.

Using the ORD-provided list of recommended institutions, the CO will contact these institutions to advertise the opportunity(ies). The CO will notify the COR once the announcements have been posted. The COR may supplement the CO's announcement by providing additional copies of announcements to the institutions or posting the announcements on their local ORD web-sites. ORD should list student service opportunities in their acquisition forecast, to the extent they are known.

37.1.3.6.5 Evaluation Factors

The opportunity announcements will notify the students or recent graduates that factors other than price are significantly more important than price as the basis for award. The technical evaluation factors that will be used by the COR to evaluate the strengths and weaknesses of each offerors resume will be identified in the solicitation and should include the following elements:

- (a) Level of experience related to the SOW requirements (paid or volunteer work and academic)
- (b) Level of experience in laboratory work (paid or volunteer work or academic)
- (c) Relevant Education
- (d) Relevant Training

EPA intends to establish the recommended rates for these contracts based on the hourly rate applicable to the specified education level and location for performance of the duties described in the SOW. Hourly rates are based on the OPM General Schedule Salary Tables. For direct awards to student(s) or recent graduate(s), the rates are inflated to include the costs of self-employment taxes for Social Security and Medicare. See Appendix 37.1.3-C for a schedule of rates for student or recent graduate services.

Payment under contracts awarded to an institution or nonprofit organization will be negotiated on a case by case basis. They will include additional costs associated with administrative expenses incurred by the institution running the program.

ORD will develop the pricing table by education level and location, update it on an annual basis, and provide it to the OAM APTSC within 20 workdays of the OPM's publication of the new General Schedule and locality pay schedules each year. OAM will distribute copies of the new pricing table to the contracting officers.

Students or recent graduates will be provided the rate and will be instructed to propose accordingly in order to have an acceptable proposal. In this way, price will be considered the same for all students or recent graduates (offerors). If a different rate or price is proposed, it must be accompanied by an explanation indicating why the provided rate was not proposed.

37.1.3.6.6 Eligibility

Eligibility is established at the time of award. Students or recent graduates must be at least 18 years of age by the time of award.

EPA ORD employees, their spouses, and children are not eligible to participate in this program and receive these contracts.

U.S. citizens are eligible to participate in this program and receive these contracts. Non-U. S. citizens may be eligible to participate, depending on their immigration status and the applicable regulations of the Bureau of Citizenship and Immigration Service (BCIS) (formerly known as the Immigration and Naturalization Service.) Before EPA can issue an award to anyone *without* a social security number or with restrictive marking on his/her social security card, the student must provide documentary evidence from BCIS of his/her eligibility to work in the U.S. Foreign students in the U.S., under F-1 visas, are usually not able to participate in this program due to BCIS restrictions for off-campus work.

37.1.3.6.7 Proposals

Students' or recent graduates' resumes and their proposed hourly rates will serve as the proposal for student or recent graduate services requirements. The submitted resumes should be no more than two (2) pages in length, exclusive of the transcript and documentary evidence from BCIS, if appropriate, and contain the following information:

- (a) Full legal name
- (b) Mailing address
- (c) Email address (if any)

- (d) Telephone number
- (e) Social Security Number
- (f) Date of Birth
- (g) Place of Birth
- (h) Citizenship or immigration/visa status (documentary evidence from BCIS)
- (i) Description of recent classes relevant to the SOW
- (j) Experience related to the scientific field (paid or volunteer work and academic)
- (k) Experience in laboratory work (paid or volunteer work or academic)
- (l) Scientific publications with a description of the individual's participation in the Publication
- (m) An attached certified copy of the most recent transcript showing listing of courses and overall grade point average

37.1.3.6.8 Selection

The CO will review the proposals to ensure that all are responsive to the terms of the solicitation. The CO will provide technical proposals (resumes) to the COR for technical review. CORs may conduct interviews with the most promising candidates, if desired. Mentors may participate in the interviews.

Upon completion of the technical review, the COR will provide the CO with his/her evaluation of the strengths and weaknesses of each resume and interview results. CORs will make a recommendation of candidates for selection. The COR will identify the total number of hours, start and end dates, and name of COR and/or mentor for the student or recent graduate. The CO will notify the student(s) or recent graduate(s) of selection.

37.1.3.6.9 System for Award Management (SAM)

[Please note: In order to respond to a solicitation for student services, the student or recent graduate must register with the three systems as described below, SAM, D&B and FedConnect. A student or recent graduate will not be able to ask proposal-related questions, or submit a proposal, until these three registrations are completed.]

The student or recent graduate contractor must register with the System for Award Management (SAM) and Dun and Bradstreet (D&B)(in order to obtain a Data Universal Number System (DUNS) number or DUNS +4). Failure to register may adversely affect receiving an award or being paid. Student or recent graduate contractors are required to provide the following business information in SAM: Taxpayer Identification Number (TIN; either a Social Security Number or Employer Identification Number), Electronic Funds Transfer (EFT) information, and DUNS number.

To obtain a DUNS number, students or recent graduate contractors can call D&B at 1-973-921-5500 or contact D&B at <http://fedgov.dnb.com/webform>. To register for SAM, students or recent graduate contractors can call SAM at 1-866-606-8220 or contact SAM at <http://www.sam.gov>. There is no charge to register for DUNS or SAM.

In addition to obtaining a DUNS number and registering for SAM, students or recent graduate contractors must also be registered in FedConnect, which is the electronic communications portal between EPA and the contracting community to streamline the process of doing business with the federal government. Students or recent graduate contractors can register with FedConnect at www.fedconnect.net/FedConnect/. For assistance in registering please call the FedConnect Help Desk at (800) 899-6665 or email at support@fedconnect.net. All students or recent graduate contractors must be registered in the SAM because it facilitates registration for FedConnect. PLEASE NOTE that students or recent graduate contractors MUST have their SAM profile set to “public;” otherwise FedConnect will not be able to access the SAM information required to validate credentials.

37.1.3.6.10 Acknowledgment of Special Terms

No work may be performed under a student services contract unless and until the student or recent graduate signs, dates, and returns the Acknowledgment of Special Terms (Appendix 37.1.3-D) to the CO. The CO is responsible for ensuring that the acknowledgment is sent to the student or recent graduate contractor. The original, signed acknowledgment is included as part of the order in the official file and a copy sent back to the contractor.

37.1.3.6.11 Award

The CO will prepare the award documentation to include the base period (of no more than two years) and *up to* four additional option periods (of no more than two years each). Base and option periods together may *not exceed 60 months or five years, and any period of performance (base or option period) cannot exceed 24 months or two years*. Note: awards for shorter periods are permitted.

However, if a shorter period is selected, the contract cannot be extended without approval for a non-competitive award. Hours shown in the award are estimates only but intended to project the maximum hours allowable. If the award contains a line item for an option period to renew or extend the order, the CO and the student or recent graduate may agree to extend the period of performance by bilateral modification to the award. The hourly rate shown in the original award for the option period will be the rate that was in effect at the time of award for the applicable grade and location. This rate will be adjusted, upon exercise of the option period, for inflation to the applicable rate from the most current pricing table for students or recent graduates. However, the hourly rate will not be adjusted to a different grade level for contracts with periods of performance of 2 years or less.

The Government is under no obligation to exercise an option. The total duration of an award, including base and any options and other extensions, shall not exceed 60 months or five years.

Award packages for simplified acquisitions will include the SOW, terms and conditions, student or recent graduate acknowledgment of special terms and a sample invoice. (Appendix 37.1.3 - B, D, E and F represent a sample order for a direct award under simplified acquisition procedures.) Award packages for contracts over the simplified acquisition threshold, more commonly associated as an indirect contract with an institution or other organization, must be awarded in accordance with FAR Part 15.

In instances when direct contracts with students or recent graduates exceed the simplified acquisition threshold, and require the use of a negotiated procurement, the award document will include all FAR Part 15 requirements plus the student's acknowledgement of special terms and a sample invoice.

37.1.3.6.12 Required Clauses

The following clauses must be included in all awards for student or recent graduate services and may be incorporated by reference. *Note: 52.213-04 is only for awards made under simplified acquisition procedures. This list of clauses is not all inclusive. The CO must add any other clauses needed to address the contract type, contract dollar value or any unique procurement requirements. The CO must insert applicable FAR/EPAAR clauses in purchase orders for these services generated using the appropriate OAM automated contract writing system.

Federal Acquisition Regulation (FAR) Clauses:

Number	Title	Date
52.213-04	Terms and Conditions – Simplified Acquisitions	Aug 2012
52.227-17	Rights in Data – Special Works	Dec 2007
52.232-3	Payments under Personal Services Contracts	Apr 1984
52.232-25	Prompt Payment	Oct 2008
52.232-33	Payment by Electronic Funds Transfer – Central	Oct 2003
52.233-01 Alt.1	Disputes – Alternate I	July 2002
52.249-12	Termination – Personal Services	Apr 1984

EPA Acquisition Regulation (EPAAR) Clauses:

Number	Title	Date
1552.209-70	Organizational Conflict of Interest Notification	Apr 1984
1552.209-71	Organizational Conflict of Interest	Apr 1984
1552.211-79	Compliance with EPA Policies for Information Res.	Oct 2000
1552.235-71	Treatment of Confidential Business Information	Apr 1984
1552.235-73	Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information	Apr 1996
1552.235-75	Access to Toxic Substances Control Act Confidential Business Information	Apr 1996
1552.235-76	Treatment of Confidential Business Information (TSCA)	Apr 1996
1552-235-77	Data Security for Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information	Dec 1997

1552-235-78	Data Security for Toxic Substances Control Act Confidential Business Information	Dec 1997
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1552-235-80	Access to Confidential Business Information	Oct 2000
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37.1.3.6.13 Agency Personnel Verification Procedures

The purpose of this requirement is to comply with the Homeland Security Presidential Directive 12 and the requirement to have onsite contractor personnel identified and verified for security purposes.

**Attachment to Performance Work Statement
Agency Security Requirements for Contractor Personnel
December 1, 2011**

To safeguard the EPA workforce and comply with Homeland Security Presidential Directive 12 (HSPD-12), Executive Order (E.O.) 13467, E.O. 13488 and Office of Personnel Management (OPM) regulations, the EPA requires the following:

- **For Unescorted Access for 6 Months or Less**

Contractor employees needing unescorted physical access to a controlled EPA facility¹ for 6 months or less must be determined by the EPA to be fit before being issued a physical access badge (picture ID). A fitness determination is, per E.O. 13488, a decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a federal agency as a contractor employee. A favorable fitness determination is not a decision to contract with an individual. Contractor employees must undergo, at a minimum, an FBI fingerprint check of law enforcement and investigative indices (see Section 2).

- **For Unescorted Access for More than 6 Months**

Contractor employees needing unescorted access to a controlled EPA facility for more than 6 months are required to have an HSPD-12 smart card, called an EPASS badge. Eligible contractor employees must have a completed or initiated background investigation at the National Agency Check and Inquiries (NACI) level or above, comply with all other investigative and HSPD-12-related requirements, and be determined by the EPA Personnel Security Branch (PSB) to be fit (see Section 3). "Initiated" means that all initial security requirements have been met (paperwork is completed, submitted, and PSB-approved; favorable fingerprint results have been received; funding has been provided to cover the cost of the investigation; and PSB has sent notification that the individual may begin work).

To ensure timely contract performance, the contractor must be prepared to immediately submit upon contract award the contractor employee information detailed in Section 1.c. This applies

¹ A controlled facility is an area to which security controls have been applied to protect agency assets. Entry to the controlled area is restricted to personnel with a need for access.

also to incumbent contractors' employees for follow-on acquisitions. All contractor employees under a new contract are subject to the requirements in Sections 2 or 3; however, the time needed to meet security requirements may be shorter for personnel who already have a favorable fitness determination.

Contractor employees may begin work on the contract start date provided all applicable documentation in Sections 1, 2, and 3 has been received by the EPA and there is no derogatory information to preclude a favorable determination. Timely submission of contractor employees' security forms and other required documentation is essential.

A favorable determination may be revoked at any time should the EPA discover derogatory information that deems a contractor employee unfit. Contractor employees deemed unfit will not be allowed to continue under the contract, and the contractor will be responsible for providing replacements acceptable to the EPA.

The EPA may make a determination of a contractor employee's fitness at any of the following points:

- When the EPA prescreens the individual's security forms. "Red flag" issues include:
 - Having been fired from a previous job or having left under unfavorable circumstances within the past 5 years (or longer, depending on the security form questions and type of investigation);
 - Failure to register with the Selective Service System (applies to male applicants born after December 31, 1959);
 - Within the past 5 years (or longer, depending on the security form questions and type of investigation), any arrest, charge, or conviction that has been upheld for violent or dangerous behavior or a pattern of arrests that demonstrates disregard for the law;
 - Illegal drug use within the previous year, or drug manufacture or other involvement for profit within the past 5 years (or longer, depending on the security form questions and type of investigation).
- When FBI fingerprint results are returned to the EPA;
- When OPM returns the individual's investigative results to the EPA;
- When the EPA becomes aware that the contractor employee may not be fit to perform work for or on behalf of a federal agency. The contractor is responsible for monitoring its employees' fitness to work and notifying the EPA immediately of any contractor employee arrests or illegal drug use.

1) Initial Contractor Requirements

This section contains the contractor's initial security requirements, which must be met before contractor employees can perform work **on-site** at EPA under this contract.

- a) The contractor must identify a point of contact (POC) and alternate POC to facilitate security processes.
- b) The contractor must ensure that all foreign nationals who will work under this contract have a valid U.S. Immigrant Visa or nonimmigrant Work Authorization Visa. The contractor must use E-Verify to verify employment eligibility as required by the FAR.

- c) The EPA requires contractor employee information for the investigative and EPASS processes. Immediately upon contract award or anytime new personnel are brought onboard, the contractor POC must log on to a secure, EPA-identified portal, create an account, and submit complete contractor employee information: Full name (as found on employment records and driver's license), Social Security number, date of birth, place of birth (city, state, country), citizenship, employee email address, EPA Program Office or Regional Office, and EPA work city and state. Note: Incomplete names, inaccurate names, and nicknames are unacceptable and may delay contractor employees' start date. Instructions and the portal link will be provided upon contract award.
- d) EPA will provide the login information for the portal. After submission of the contractor employees' data, the Contracting Officer's Representative (COR) will notify the contractor POC if additional information or corrections are required. The COR's approval of the information triggers the investigative and EPASS processes.

2) Requirements for Contractor Employees Needing Unescorted Access for 6 Months or Less

This section contains the requirements for contractor employees who are not eligible for an EPASS badge but who need unescorted physical access. The minimum security requirement is an FBI fingerprint check.

- a) Before the contractor employee can begin work on-site at the EPA:
 - i) He/she must be fingerprinted by the EPA; arrangements will be made by the COR.
 - ii) The contractor employee must satisfactorily respond to all questions/information requests arising from the EPA's review of the fingerprint results.
 - iii) The EPA must determine that the fingerprint results are favorable.

Once all requirements in Section 2(a) are met, the COR/PO and contractor employee will be notified that the contractor employee can start work. Contractor employees will be issued a physical access badge and may work on-site at EPA. Contractor employees must sign a receipt acknowledging responsibility to safeguard the badge and surrender it when required (see Section 4.b).

3) Requirements for Contractor Employees Needing Unescorted Access for more than 6 Months

This section contains the requirements for contractor employees who are eligible for an EPASS badge and who must have, at a minimum, a NACI background investigation completed or initiated. Contractor employees needing access to sensitive information or otherwise occupying moderate or high-risk positions must undergo an investigation above the NACI level. The EPA will assign a position risk level to each position on the contract and identify which contractor employees are EPASS-eligible.

- a) EPASS-eligible contractor employees must undergo a background investigation appropriate to the risk level of the position occupied, as specified by the EPA; the minimum acceptable investigation is a NACI.

- b) Employees who have previously undergone a federal background investigation at the required level and who have worked for or on behalf of the federal government without a break in service since the investigation was completed may not need a new investigation. The EPA will verify the investigative information and notify the contractor employee and COR if a new investigation is required. If an investigation is not needed, the contractor employee must still be fingerprinted by the EPA for an FBI fingerprint check and have favorable fingerprint results returned before beginning work on-site at EPA.
- c) Before beginning work on-site at the EPA, contractor employees who require a new background investigation must:
 - i) Complete and submit the appropriate OPM security questionnaire specified by the EPA via OPM's e-QIP system. Access to e-QIP will be provided by the EPA; the questionnaires are viewable at www.opm.gov/forms. Foreign national contractor employees must, on the security questionnaire, provide their alien registration number or the number, type, and issuance location of the visa used for entry to the United States.
 - ii) For a NACI only, also complete the OF 306, Declaration for Federal Employment, as required by OPM for any NACI and available at http://www.opm.gov/forms/pdf_fill/of0306.pdf. Contractor employees must answer questions 1-13 and 16, then sign the form on the "Applicant" line, 17a.
 - iii) Follow all instructions on the form(s), answer all questions fully, and submit signature pages as directed by the EPA.
 - iv) Be fingerprinted by the EPA; arrangements for fingerprinting will be made by the COR.
 - v) Satisfactorily respond to all questions/information requests arising from the EPA's review of the forms or fingerprint results.
 - vi) Receive favorable fingerprint results.
- d) Once all requirements in Section 3(c) are met, the COR/PO and contractor employee will be notified that the contractor employee can start work. Contractor employees may work on-site at EPA while OPM conducts the background investigation.
- e) At a time and location specified by the EPA, contractor employees must report in person for EPASS identity (ID) proofing and show two unexpired forms of identification from the lists on Department of Homeland Security Form I-9. At least one of the documents must be a valid, unexpired state or federal government-issued photo ID; non-U.S. citizens must show at least one ID from Column A on Form I-9.
- f) Before being issued an EPASS badge, contractor employees must sign a receipt acknowledging responsibility to safeguard the badge and surrender it when required (see Section 4.b). Contractor employees must meet all EPASS badge life-cycle requirements.
- g) A contractor employee has the right to appeal, in writing through the contractor POC to the COR, the denial or revocation of an EPASS badge. If the COR believes the appeal is justified, he/she will forward it to the Security Management Division (SMD). SMD's decision on behalf of the EPA will be final.

4) Ongoing Contractor Security Responsibilities

- a) The contractor POC must immediately provide updated information via the secure portal when new contractor employees are added to the contract. These contractor employees must meet all initial investigative requirements before beginning work on-site at EPA. The contractor POC must also update information via the secure portal whenever a contractor employee leaves the contract.
- b) The contractor POC must ensure that all EPA physical access and EPASS badges are returned to the COR as soon as any of the following occurs, unless otherwise determined by the Agency: (i) when the badge is no longer needed for contract performance; (ii) upon completion of a contractor employee's employment; (iii) upon contract completion or termination.
- c) These EPA security requirements must be incorporated into all resulting subcontracts wherein contractor personnel working under the subcontract require EPA physical access.

37.1.3.6.14 Billable Hours

Hours shown in the award are estimates. EPA will pay students or recent graduates only for the number of hours actually worked. Students or recent graduates may bill their time and be compensated in increments of a quarter of an hour. If the student or recent graduate works eight minutes or more, the total will be rounded up if and seven minutes or less, the total will be rounded down (on a daily basis).

As self-employed contractors, students or recent graduates do not accrue leave or holiday benefits. EPA will *not* pay for any non-work hours, regardless of the reason why the Agency/building is closed. This includes scheduled Government holidays, unscheduled holidays, or any other unscheduled closure (e.g., inclement weather, furloughs, security reasons.) When the Government decides to close the building after the student or recent graduate has reported to work, the Government will pay only for the hours worked before closure. Additionally, as self-employed contractors, students or recent graduates are paid the hourly rate specified in the contract for any hours worked beyond the 40 hour week, with no overtime premium.

37.1.3.6.15 Overtime and Withholdings

Students or recent graduates performing under direct contracts are considered self-employed contractors, and are, therefore, exempt from the Fair Labor Standards Act and the Service Contract Act. As contractors, Federal, state or local income taxes or Social Security (FICA) payments will *not* be deducted from payments. The rate of pay is set forth in the contract based on the level of education needed to perform the requirements in the SOW. Students or recent graduates who have more years of education than required, or who attain a degree while work is underway *do not* move to a higher level of pay than required by the SOW.

Students or recent graduates, who are not employed by any other employer, whose net earnings are \$400 or more, must pay self-employment taxes to pay into the Social Security and Medicare trust funds. They may also be liable for income taxes dependent on their total earnings. Since there is no withholding on their income, they may need to make quarterly estimated tax payments.

37.1.3.6.16 Invoicing/Payments

All payments will be made through EFT. The student or recent graduate shall submit the original copy of invoices for payment to the EPA Finance Center (FC) designated in the award, with copies to the CO, COR, and mentor. The student or recent graduate may submit invoices bi-weekly. If an indirect contract is awarded to an institution or nonprofit, the contractor is responsible for submitting invoices as outlined in the respective contract on behalf of the student. To be considered a complete and proper invoice, the invoice must include the following information:

- (a) Contractor name (student)
- (b) Invoice Date
- (c) Award number
- (d) Billing period (dates covered by the invoice)
- (e) Daily record of hours worked
- (f) Total number of hours worked during the billing period

EPA-FC will forward complete and proper invoices to the COR for review and acceptance. Once the COR has accepted the services by approving the invoice, EPA-FC will endeavor to pay all invoices for these services within two weeks after receipt of a proper invoice. However, EPA is not obligated to make payment before the 30th day, as provided in the Prompt Payment clause. Students or recent graduates who submit timely invoices and do not receive payment within the 30 days stipulated in the Prompt Payment Act are entitled to interest payments as prescribed in the clause. (Appendix 37.1.3-F is a sample invoice.)

37.1.3.6.17 Travel

If performance of the contract requires overnight travel, the student or recent graduate will travel under the rules and procedures established for Federal employee travel (chapters 57 and 81 of title 5, United States Code.) The respective ORD organization is responsible for issuing and approving invitational travel orders in accordance with Agency delegations.

Only transportation tickets and travel management center fees may be charged to the centrally billed account. Therefore, the student or recent graduate must be able to: (1) pay any other travel expenses out of pocket; or (2) charge any other travel expenses to a personal credit card. The student or recent graduate would then file travel vouchers for reimbursement of allowable out of pocket expenses to close out the travel.

37.1.3.6.18 Vaccinations and Immunizations/Medical Monitoring/Health and Safety Training

(a) Vaccinations and Immunizations.

(1) Before beginning certain types of work, the student or recent graduate may be offered non-mandatory vaccinations, immunizations, or treatments as specified in the Statement of Work. The purpose of these vaccinations, immunizations, or treatments is to safeguard the health of those whose work may expose them to health or safety risks in the environment.

- (i) EPA will bear all costs for the administration of the offered vaccinations,

immunizations, or treatments provided that the student or recent graduate receives such treatment at the time and location designated by the Contracting Officer's Representative.

(ii) Student or recent graduates electing to receive vaccinations, immunizations, or treatments from sources other than those designated by the Contracting Officer's Representative will not be reimbursed for any costs associated with such treatment.

(2) Students or recent graduates that elect not to receive vaccinations, immunizations, or treatments from either the Government or private source will be required to sign a form letter acknowledging that they have declined the offered treatment. A student or recent graduate who declines the vaccinations or immunizations will not be covered by the Government for costs of or treating illnesses that could have been avoided by taking the recommended immunization therapy, unless the student or recent graduate provides written documentation from a physician certifying to the student's or recent graduate's intolerance of the immunization drugs.

(3) Students or recent graduates who have already received vaccinations, immunizations, or treatments suggested by the Statement of Work may provide copies of shot records or other evidence acceptable to the Contracting Officer's Representative in lieu of receiving a new round of treatment or signing the declination letter. The Contracting Officer's Representative will retain copies of such evidence in the files related to the student's or recent graduate's work.

(b) Medical Monitoring.

(1) Students or recent graduates whose contract requires work with or around hazardous substances, may be offered medical examinations to identify any adverse health effects related to exposure. These examinations, when offered, will be paid for by the Government.

(2) These medical examinations have been constructed in order to answer specific questions about exposure risk and health in the work place. These examinations are not meant to be "wellness" examinations. Participation in these examinations should not be construed as an adequate substitute for periodic examinations by the students' or recent graduates' personal physicians. The types of evaluations that may be performed are baseline, periodic, and exit.

(i) Baseline evaluations are done to characterize the state of health of the individual prior to commencing work on a new assignment. They may be conducted in order to assess the individual's health status in relation to the special demands of the proposed job assignment.

(ii) Periodic evaluations are performed to identify and measure any adverse effects from occupational activities, and to control risks from occupational exposures.

(iii) Exit evaluations are conducted when an individual terminates a given position that requires medical surveillance. These examinations are performed to document the health status of an individual at the end of work in a particular position.

(c) Health and Safety Training.

Students or recent graduates are expected to participate in health and safety training, at the Government's expense, to make them aware of safety programs and policies at EPA. This

includes initial safety, health, and environmental management training, laboratory health and safety training, and field activity training. It also includes general safety, personal protective equipment, physical hazards and chemical hazards training. This training is required under Federal, OSHA, EPA, DOT, and NRC regulations. Training may involve face-to-face classroom courses or computer-based training courses.

37.1.3.6.19 Termination

FAR clause 52.249-12, "Termination (Personal Services)"(APR 1984), is incorporated into these awards. This clause permits the Government to terminate the award anytime, for any reason, with at least 15 days written notice by the CO to the contractor. The Government may terminate the award for cause in the event the contractor fails to comply with any terms and conditions, including those listed in the Acknowledgment of Special Terms, or repeatedly fails to report on scheduled workdays, or otherwise fails to perform services required under the award. False statements on the resume as well as results of background checks that reveal information that the student represents a risk to the interests of EPA are also grounds for termination.

If the award is terminated for cause, the student or recent graduate will be paid only for hours worked to the point of termination and will not receive the 15 days notice described in the clause. Note: this clause also permits, with the written permission of the CO, the contractor the right to terminate the award with at least 15 days written notice to the CO.

37.1.3.6.20 Reporting

ORD and OAM will need the capability of reporting and tracking the acquisitions awarded under this new authority. COs will issue these awards using the EPA Acquisition System (EAS) for simplified acquisitions and for negotiated acquisitions. When using EAS, COs must code the control number to include the acronym ORDPS followed by Document Control Number (DCN). When using EAS, COs must code the product/service code as R497, personal services contracts, and then insert the appropriate North American Industry Classification System code. Using these codes, OAM may issue reports on these acquisitions from the automated systems.

37.1.3.6.21 Government Furnished Property

Students or recent graduates employed at Offices, Centers, and Laboratories of the Environmental Protection Agency may be granted the authority to use Government furnished property should the criteria at EPAAG 45.1 be met.

APPENDIX 37.1.3-A

SAMPLE ANNOUNCEMENT FOR PERSONAL SERVICES CONTRACTS FOR STUDENTS OR RECENT GRADUATES

**U.S. Environmental Protection Agency
Office of Research and Development
Office/Center/Lab**

The (*Office/Center/Lab*) of the Office Research and Development (ORD) at the U.S. Environmental Protection Agency (EPA) is seeking (*number*) of individuals, at least 18 years of age who are either students (in good standing enrolled in a degree program, not necessarily carrying a full course load, but pursuing a degree at a recognized educational institution) or recent graduates (graduated with a degree from a college or university within the past two years) to provide services under a contractual agreement in support of (*name of the program/project.*)

The (*Office/Center/Lab*) is responsible for (*functional statement.*) The student/recent graduate contractor will perform (*types of services required.*)

The student/recent graduate contractor should possess (*required expertise and skills needed*) in order to provide these services, as well as (*required education level.*)

This work is expected to begin approximately (*month/day/year,*) and end approximately (*month/day/year*) and represents an estimate of (*insert number*) hours of effort. The principal duty station location is (*City, State.*) The student may enter the building only during business hours or when a project member is present. (*Description of working conditions that may be hazardous or physically strenuous.*)

U.S. citizens are eligible to participate in this program. Non-U.S. citizens may be eligible to participate, depending on their immigration status and the applicable regulations of the Bureau of Citizenship and Immigration Service (BCIS,) formerly known as the Immigration and Naturalization Service. Students or recent graduates who are EPA ORD employees, or the spouse or child of an EPA ORD employee, are not eligible to participate.

The hourly rate of pay is commensurate with the level of education and experience, as follows: (*\$XX/XX per hour - from student or recent graduate services pricing table.*) Students or recent graduates will be provided the rate and will be instructed to propose accordingly in order to have an acceptable proposal. In this way, price will be considered the same for all students or recent graduates (offerors). If a different rate or price is proposed, it must be accompanied by an explanation indicating why the provided rate was not proposed.

Student/recent graduate contractors will be paid the basic hourly rate only for the number of hours worked beyond the 40-hour work week. Student/recent graduate contractors do not accrue leave or holiday benefits and are not paid for any non-work days, regardless of the reason.

The student/recent graduate contractor is considered as an independent contractor; therefore, Federal, State, Local, Social Security, and Medicare taxes will not be withheld.

Student/recent graduate contractors are responsible for reporting income to authorities and paying all taxes.

Interested students or recent graduates may apply for this opportunity by providing the proposed hourly rate (the one shown above) and a one or two page, excluding the copy of the transcript and documentary evidence from BCIS, if appropriate, resume or statement of qualifications including:

- Full legal name
- Mailing address
- Email address (if any)
- Telephone number
- Social Security Number
- Date of Birth
- Place of Birth
- Citizenship, or immigration/visa status (documentary evidence from BCIS)
- Description of recent classes relevant to the SOW
- Experience related to the scientific field (paid or volunteer work and academic)
- Experience in laboratory work (paid or volunteer work or academic)
- Scientific publications with a description of the individual's participation in the publication
- An attached certified copy of the most recent transcript showing listing of courses and overall grade point average

Interested students or recent graduates should submit their resume or statement of qualifications and rate proposal to: *(Name of contracting officer, mailing address, e-mail address, fax number.)*

The deadline for submissions is *(time/month/day/year.)* Students or recent graduates are responsible for submitting proposals so that they reach the Government office designated by the time specified.

Any proposal received at the Government office designated after the exact time specified for receipt is "late" and will not be considered unless it is received before award is made, and the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition and:

1. It was transmitted electronically and received at the initial point of entry to the Government infrastructure not later than 5:00 p.m., one working day prior to the date established for receipt; or
2. There is acceptable evidence to establish it was received at the Government installation and was under the Government's control prior to the time set for receipt; or
3. It was the only proposal received.

However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated by the exact time specified, and urgent Government requirements preclude amendment of the announcement, the time specified for receipt will be deemed extended to the same time of day specified on the first work day on which normal Government processes resume.

The Government will make contract awards based on all other factors other than price (students'/recent graduates' knowledge and skills, academic and work experience — training and course work as it relates to the services described in the Announcement) being significantly more important than price. Personal interviews may be conducted with the most promising candidates.

The evaluations of students' or recent graduates' resumes or statements of qualifications will be based on the following evaluation factors: *(Identify the factors that will be evaluated by order of importance - level of scientific field experience (work and academic), level of laboratory experience (work and academic), education, training, etc.)*

Students or recent graduates who perform under contract to EPA must have a checking or savings account at a financial institution that will accept direct deposits of Federal funds for Electronic Funds Transfer (EFT) prior to award and must register with the System for Award Management (SAM) and Dun and Bradstreet (D&B)(in order to obtain a Data Universal Number System (DUNS) number or DUNS +4). Failure to register may adversely affect receiving an award or being paid. Student or recent graduate contractors are required to provide the following business information in SAM: Taxpayer Identification Number (TIN; either a Social Security Number or Employer Identification Number), Electronic Funds Transfer (EFT) information, and DUNS number.

To obtain a DUNS number, students or recent graduate contractors can call D&B at 1-973-921-5500 or contact D&B at <http://fedgov.dnb.com/webform>. To register for SAM, students or recent graduate contractors can call SAM at 1-866-606-8220 or contact SAM at <http://www.sam.gov>. There is no charge to register for DUNS or SAM.

In addition to obtaining a DUNS number and registering for SAM, students or recent graduate contractors must also be registered in FedConnect, which is the electronic communications portal between EPA and the contracting community to streamline the process of doing business with the federal government. Students or recent graduate contractors can register with FedConnect at www.fedconnect.net/FedConnect/. For assistance in registering please call the FedConnect Help Desk at (800) 899-6665 or email at support@fedconnect.net. All students or recent graduate contractors must be registered in the SAM because it facilitates registration for FedConnect. PLEASE NOTE that students or recent graduate contractors MUST have their SAM profile set to “public;” otherwise FedConnect will not be able to access the SAM information required to validate credentials. Additionally, in order to respond to a solicitation for student services, the student or recent graduate must register with the three systems— SAM, D&B and FedConnect—or they will not be able to ask proposal –related questions, or submit a proposal

unless all three registrations are completed.

Students or recent graduates who perform under contract to EPA are required to undergo a background investigation consisting of a check of Federal Bureau of Investigation (FBI) name and fingerprint files, and a suitability determination. Selected students or recent graduates will be provided copies of the appropriate forms and instructions on their completion and submission requirements.

Student/recent graduate contractors are responsible for all costs of transportation to and from the principal duty station location. EPA does not provide nor pay for housing, meals, or other living expenses while working at the principal duty station location. If performance of the contract requires overnight travel, the student/recent graduate contractor will travel under the rules and procedures established for Federal employee travel.

EPA will be responsible for compensating students or recent graduates in the same manner as Federal employees for any injury suffered while performing these services. Students or recent graduates are protected from personal common-law tort liability for damages to third parties arising out of his/her work under the same broad-based immunity provided to Federal employees while performing these services. Properly licensed students or recent graduates may be permitted to drive Government vehicles, if required to do so by the statement of work.

Students or recent graduates will be required to comply with Federal requirements for Standards of Ethical Conduct and Conflicts of Interest.

Students or recent graduates may be offered, at Government expense, non-mandatory vaccinations, immunizations, treatments, medical examinations, and health and safety training to safeguard their health prior to beginning certain types of work which may expose them to health or safety risks in the environment.

Selected students or recent graduates will receive more information about these issues prior to award of any contracts.

APPENDIX 37.1.3-B**SAMPLE STATEMENT OF WORK****1. Agency and Office Mission and Project Description:**

The National Health and Environmental Research Laboratory (NHEERL) is responsible for conducting studies of adults and children to characterize relationships between particulate matter (PM) and co-pollutant exposure and health indices. NHEERL is developing animal models that can mimic human diseases, such as asthma.

2. Description of Work Required:

The projects for which the student or recent graduate is needed to perform involve understanding the effects of PM. The student or recent graduate will be expected to analyze global climate changes and evaluate the risks to human health in accordance with established procedures, perform chemical analysis and prepare weekly progress reports. All samples will be analyzed according to specification, either in the American Society for Testing and Materials Manual or instructions provided by their Contracting Officer's Representative.

All samples shall be prepared according to the technical requirements. The student or recent graduate will prepare all samples as requested, but the number of samples for testing will not exceed 12 samples per month. The student or recent graduate will maintain careful and accurate records in a Laboratory Notebook. This notebook, and all other data produced in performance of this work, will be the property of the Environmental Protection Agency (EPA).

3. Quality Assurance Requirements:

Activities conducted by the student or recent graduate will be governed by the EPA quality system, as described in the approved Quality Management Plan for the organization issuing the contract. Therefore, the student or recent graduate must consult with NHEERL's quality assurance manager prior to initiating work on this project, *or* this work is included in an existing quality assurance plan, identified as _____ dated _____. (*Whichever is appropriate.*)

4. Description of working conditions:

Work will be performed in a laboratory. Students or recent graduates will be required to wear safety apparel and to closely observe safety requirements.

5. Travel Requirements: No travel is anticipated for this effort.

APPENDIX 37.1.3-C

PRICING TABLE FOR STUDENT OR RECENT GRADUATE SERVICES

1. Rates for students funded through direct Purchase Order include cost of self-employment taxes for social security and Medicare.
2. Students are paid only for the hours worked (with no holiday or leave benefits). Full time work should be estimated at no more than 1928 hours/year.
3. The recommended rate Table for Student or Recent Graduate Services is updated annually by ORD to reflect pay and locality increases and can be found at:

<http://intranet.ord.epa.gov/administrative/hr/employment/student-services>

APPENDIX 37.1.3-D

NO WORK MAY BE PERFORMED UNDER THIS ORDER UNTIL THE STUDENT OR RECENT GRADUATE SIGNS AND DATES THE FOLLOWING:

Acknowledgment of Special Terms

The student or recent graduate acknowledges that he/she fully understands and accepts the following special terms of this order:

A. The U.S. Government will be responsible under the provisions of chapter 81 of Title 5, United States Code for compensating the student or recent graduate in the same manner as a Federal employee for any injury suffered while performing services under this order.

B. The student or recent graduate is protected from personal common-law tort liability for damages to third parties arising out of his/her work under this order under the same broad-based immunity provided to Federal employees under the Federal Tort Claims Act (Chapter 171 of Title 28 of United States Code).

This protection does not apply to claims brought against the student or recent graduate for money damages for a violation of the Constitution or for violation of a statute of the United States under which such action against an individual is otherwise authorized, and will not apply to damages that are the result of unauthorized or expressly prohibited actions or gross negligence on his/her part. Properly licensed students or recent graduates may be allowed to drive Government vehicles, if required to do so by the statement of work.

C. For all other legal and tax purposes, the student or recent graduate is regarded as an independent contractor.

D. Payments for services performed under this order are reportable and taxable as earned income.

1. Federal, State or local income taxes will *not* be deducted by EPA from payments made under this order. As a self-employed individual, the student is responsible for payment of all such taxes on income received under this order.

2. No Social Security (FICA) or Medicare taxes will be deducted by EPA from payments made under this order. As a self-employed individual, the student is responsible for payment of all such taxes on income received under this order. EPA's Office of Chief Financial Officer will report the total amount paid under this order to the U.S. Internal Revenue Service on a Standard Form 1099 at the end of the calendar year. The student or recent graduate is not considered to be an employee, and thus will not receive a W-2 form.

E. In order for EPA to process payments to the student or recent graduate, the student or recent graduate must have a checking or savings account at a financial institution that will accept direct deposits of Federal funds through Electronic Funds Transfer.

F. The student or recent graduate will be issued a building pass (ID card) and/or parking permit. These items must be returned to EPA at the completion of the order. Prior to obtaining a building pass, the student or recent graduate is required to undergo a background check and suitability determination by EPA. If a background check reveals information that the student or recent graduate represents a risk to the interests of the EPA, the order will be terminated immediately.

G. If the student or recent graduate is given access to EPA computers, he/she will be required to complete computer security awareness training and comply with the EPA Policies for Information Resources Management. Irresponsible use of network passwords or other unacceptable security violations will result in termination of access to EPA computers and may result in termination of this order.

H. Each student or recent graduate should avoid any outside activity or employment that creates a real or apparent conflict of interest with his/her EPA work. When there is doubt about the propriety of outside activities or employment, the student or recent graduate should consult with his/her Contracting Officer's Representative. Students or recent graduates will observe regulations governing conflicts of interest, standards of ethical conduct, lobbying and soliciting funds, and gifts from outside sources, in the same manner as "special employees." Students or recent graduates are not subject to financial disclosure requirements or post-employment restrictions which apply to Federal employees.

I. Vaccinations and Immunizations/Medical Monitoring/Health and Safety Training

1. Vaccinations and Immunizations

a. Before beginning certain types of work, the student or recent graduate may be offered non-mandatory vaccinations, immunizations, or treatments as specified in the Statement of Work. The purpose of these vaccinations, immunizations, or treatments is to safeguard the health of those whose work may expose them to health or safety risks in the environment.

i. EPA will bear all costs for the administrations of the offered vaccinations, immunizations, or treatments provided that the student or recent graduate receives such treatment at the time and location designated by the Contracting Officer's Representative.

ii. Student or recent graduates electing to receive vaccinations, immunizations, or treatments from sources other than those designated by the Contracting Officer's Representative will not be reimbursed for any costs associated with such treatment.

b. Students or recent graduates that elect not to receive vaccinations, immunizations, or treatments from either the Government or private source will be required to sign a form letter acknowledging that they have declined the offered treatment. A student or recent graduate who declines the vaccinations, immunizations will not be covered by the Government for costs of or treating illnesses that could have been avoided by taking the recommended immunization therapy, unless the student or recent graduate provides written documentation from

a physician certifying to the student's or recent graduate's intolerance of the immunization drugs.

c. Students or recent graduates who have already received vaccinations, immunizations, or treatments suggested by the Statement of Work may provide copies of shot records or other evidence acceptable to the Contracting Officer's Representative in lieu of receiving a new round of treatment or signing the declination letter. The Contracting Officer's Representative will retain copies of such evidence in the files related to the student's or recent graduate's work.

2. Medical Monitoring

a. Students or recent graduates whose contract requires work with or around hazardous substances, may be offered medical examinations to identify any adverse health effects related to exposure. These examinations, when offered, will be paid for by the Government.

b. These medical examinations have been constructed in order to answer specific questions about exposure risk and health in the work place. These examinations are not meant to be "wellness" examinations. Participation in these examinations should not be construed as an adequate substitute for periodic examinations by the students' or recent graduates' personal physicians. The types of evaluations that may be performed are baseline, periodic, and exit.

c. Baseline evaluations are done to characterize the state of health of the individual prior to commencing work in a new assignment. It may be conducted in order to assess the individual's health status in relation to the special demands of the proposed job assignment.

d. Periodic evaluations are performed to identify and measure any adverse effects from occupational activities, and to control risks from occupational exposures.

e. Exit evaluations are conducted when an individual terminates a given position that requires medical surveillance. This examination is performed to document the health status of the individual at the end of work in a particular position.

3. Health and Safety Training

Students or recent graduates will be expected to participate in health and safety training, at the Government's expense, to make them aware of safety programs and policies at EPA. These include initial safety, health, and environmental management training, laboratory health and safety training, and field activity training. It also includes general safety, personal protective equipment, physical hazards and chemical hazards training. This training is required under Federal, OSHA, EPA, DOT, and NRC regulations.

J. Except for extending coverage under items A. and B. above, the student or recent graduate is not, for any other purpose, considered to be a Federal employee and no rights or benefits as such will accrue to the student or recent graduate.

(Printed name) _____

(Signature) _____

(Date) _____

APPENDIX 37.1.3-E**SAMPLE PURCHASE ORDER ISSUED DIRECTLY TO STUDENT OR
RECENT GRADUATE OPTION FORM 347 (REV. 6/95)****Terms and Conditions of the Order****1. Acknowledgment of Special Terms**

The signed acknowledgment of special terms is hereby incorporated into this order. No work may be performed under this order unless and until the student or recent graduate has signed the acknowledgment form.

2. Electronic Funds Transfer (EFT)

Students or recent graduates must have a checking or savings account at a financial institution that will accept direct deposit of Federal funds for EFT. _____

3. Registration for Dun & Bradstreet (D&B) and Central Contractor Registration (CCR)

Students or recent graduates must register with D&B to obtain a Data Universal Number System (DUNS) number or DUNS +4 and the CCR. Failure to register may adversely affect being paid. They will need to provide the following information to CCR: their taxpayer identification number (Social Security Number), EFT information, and DUNS number.

To obtain a DUNS number, students or recent graduates can call D&B at 1-866-705-5711 or contact D&B at <http://www.dnb.com/updte>. To register for the CCR contractors can call 1-888-227-2423 or 296-961-5757 or contact CCR at <http://www.ccr.gov>. There is no charge to register for CCR or DUNS.

4. Background Check and Suitability Determinations

Students or recent graduates who perform under contract to EPA are required to undergo background checks and checks for FBI fingerprint files and suitability determinations by EPA. Upon award, the Contracting Officer will provide students or recent graduates with two copies of the SF-87, "Fingerprint Chart" (02/02) with instructions for completing the forms and for submission.

The students or recent graduates must return the completed forms to the Contracting Officer at least 14 business days prior to reporting for work. If there are not 14 business days available, the student or recent graduate will provide the completed forms to the Contracting Officer's Representative when he/she reports for his/her first day of work. The Contracting Officer is responsible for the submission of the forms to EPA's Office of Administration to process the background check and to make the suitability determination. If a background check reveals information that the student or recent graduate represents a risk to the interests of EPA, the Contracting Officer will immediately terminate the award.

5. Billable Hours

Hours shown in this order are estimates only. EPA will pay students or recent graduates only for the number of hours actually worked. Students or recent graduates may bill their time and be compensated in increments of a quarter of an hour. If the student or recent graduate works eight minutes or more, the total will be rounded up and seven minutes or less the total will be rounded down (on a daily basis).

As self-employed contractors, students or recent graduates do not accrue leave or holiday benefits. EPA will *not* pay for any non-work hours, regardless of the reason the Agency/building is closed. This includes scheduled Government holidays, unscheduled holidays, or any other unscheduled closure (e.g., inclement weather, furloughs, security reasons.) When the Government decides to close the building after the student or recent graduate has reported to work, the Government will pay only for the hours worked before closure.

As self-employed contractors, they are paid the hourly rate specified in the contract for any hours worked beyond the 40 hour week, with no overtime premium.

6. Overtime and Withholdings

Students or recent graduates performing under these contracts are considered self-employed contractors, and are, therefore, exempt from the Fair Labor Standards Act and the Service Contract Act. As contractors, Federal, state or local income taxes or Social Security (FICA) payments will *not* be deducted from payments.

The rate of pay is set forth in the contract based on the level of education needed to perform the requirements in the SOW. Students or recent graduates who have more years of education than required, or who attain a degree while work is underway *do not* move to a higher level of pay than required by the SOW.

Students or recent graduates, who are not employed by any other employer, whose net earnings are \$400 or more, must pay self-employment taxes to pay into the Social Security and Medicare trust funds. They may also be liable for income taxes dependent on their total earnings. Since there is no withholding on their income, they may need to make quarterly estimated tax payments.

7. Invoicing and Payments

All payments will be made through electronic funds transfer (EFT.) The student or recent graduate shall submit the original copy of invoices for payment to the EPA finance center (FC) designated in the award, with copies to the CO, COR, and mentor. The student or recent graduate may submit invoices bi-weekly.

To be considered a complete and proper invoice, the invoice must include the following information:

- Contractor name
- Invoice Date
- Award number
- Billing period (dates covered by the invoice)
- Daily record of hours worked

- Total number of hours worked during the billing period

EPA-FC will forward complete and proper invoices to the COR for review and acceptance. Once the COR has accepted the services by approving the invoice, EPA-FC will endeavor to pay all invoices for these services within two weeks after receipt of a proper invoice. However, EPA is not obligated to make payment before the 30th day, as provided in the Prompt Payment clause. Students or recent graduates who submit timely invoices and do not receive payment within the 30 days stipulated in the Prompt Payment Act are entitled to interest payments as prescribed in the clause. A sample invoice is attached for use. It may be reproduced.

8. Principal Duty Station

Work will be performed in the _____ facility at _____. The student or recent graduate may enter the building only during business hours or when a project member is present.

9. Compensation

The rate of compensation for this work is commensurate with the level of education and experience required to perform this work. For this work statement, the student or recent graduate will be paid \$XX.XX per hour based on the requirement that he/she has completed. Students or recent graduates may bill their time and be compensated in increments of a quarter of an hour. If the student or recent graduate works eight minutes or more, the total will be rounded up and seven minutes or less the total will be rounded down (on a daily basis).

The student or recent graduate is responsible for all costs of transportation to and from the principal duty station. The Government does not provide housing, meals or other living expenses while the student or recent graduate is working at the principal duty station. Travel away from the duty station is not expected.

10. Termination

FAR clause 52.249-12, Termination (Personal Services) (APR 1984) is incorporated into this order by reference and applies in place of the termination language at 52.213-4(f) and (g). The Government may terminate this order for cause in the event students or recent graduates fail to comply with any terms and conditions, including those listed in the Acknowledgment of Special Terms, repeatedly fail to report on scheduled work days, or otherwise fail to perform services under this order.

Additionally, false statements on resumes are grounds for termination as well as results of background checks that reveal information that the student represents a risk to the interests of EPA. If the order is terminated for cause, students or recent graduates are paid only for hours worked to the point of termination and will not receive the 15 days notice described in clause 52.249-12, "Termination (Personal Services)".

11. Overnight Travel

If performance of the order requires overnight travel, the student or recent graduate will travel

under the rules and procedures established for Federal employee travel (chapters 57 and 81 of title 5, United States Code.) The COR is responsible for issuing invitational travel orders and determining whether the student or recent graduate will be issued a U.S. Government Stored Value (Debit) Card for travel.

If the student or recent graduate is issued a U.S. Government Stored Value (Debit) Card for travel expenses, the COR will work with the Funds Control Officer in the program office to enter the amount of funding required to pay for the student's or recent graduate's lodging, meals, local transportation, and other incidental expenses. If the card is not accepted at a hotel, the student or recent graduate may get cash advances from the card to pay for these expenses. The student or recent graduate would then file travel vouchers to close-out the travel.

12. Extensions to the Term of the Order

If the award contains a line item for an option period to renew or extend the order and the price of the order is based on the pricing table for students and recent graduates, the Contracting Officer and the student or recent graduate may agree to extend the period of performance by bilateral modification to the award. The hourly rate will be adjusted to the applicable rate from the most current pricing table for students or recent graduates at the time of exercising the option. However, the Government is under no obligation to exercise an option. The hourly rate will *not* be adjusted to a different grade level for the option period. The total duration of this order, including base and any options and other extensions, shall not exceed 60 months or five years.

13. Clauses Incorporated by Reference

The following clauses are incorporated by reference:

Federal Acquisition Regulation (FAR) Clauses:

<u>Number</u>	<u>Title</u>	<u>Date</u>
52.213-04	Terms and Conditions – Simplified Acquisitions	Aug 2012
52.227-17	Rights in Data – Special Works	Dec 2007
52.232-3	Payments under Personal Services Contracts	Apr 1984
52.232-25	Prompt Payment	Oct 2008
52.232-33	Payment by Electronic Funds Transfer – Central	Oct 2003
52.233-01 Alt.1	Disputes – Alternate I	July 2002
52.249-12	Termination – Personal Services	Apr 1984

EPA Acquisition Regulation (EPAAR) Clauses:

Number	Title	Date
1552.209-70	Organizational Conflict of Interest Notification	Apr 1984
1552.209-71	Organizational Conflict of Interest	Apr 1984
1552.211-79	Compliance with EPA Policies for Information Res.	Oct 2000
1552.235-71	Treatment of Confidential Business Information	Apr 1984
1552.235-73	Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information	Apr 1996
1552.235-75	Access to Toxic Substances Control Act Confidential Business Information	Apr 1996
1552.235-76	Treatment of Confidential Business Information (TSCA)	Apr 1996
1552-235-77	Data Security for Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information	Dec 1997
1552-235-78	Data Security for Toxic Substances Control Act Confidential Business Information	Dec 1997
1552-235-80	Access to Confidential Business Information	Oct 2000

Full texts of FAR clauses are available at: <http://www.epa.gov/oam/ptod/far.pdf> and EPAAR clauses are available at: <http://www.epa.gov/oam/ptod/epaar.pdf>.

14. Contracting Officers Representatives and Mentors

a. Contracting Officer's Representative - the Contracting Officer's Representative is the primary representative of the Contracting Officer. The Contracting Officer's Representative may be either an EPA employee or, as appropriate, another Federal Agency employee, appointed by the Contracting Officer, who possesses the necessary knowledge, skills, and abilities to perform pre-award and/or post-award functions.

The Contracting Officer's Representative is responsible for technical direction, and certifying that services were received and accepted. Contracting Officer's Representatives do not have the authority to issue any technical direction which changes or modifies the scope of work, or alters the period of performance of the contract. The Contracting Officer's Representative may also serve as a mentor.

b. Mentor - the mentor is a Government scientist who provides the day-to-day direction, coaches, advises, counsels, provides guidance and support to the student or recent graduate in their work. Mentors review the student's or recent graduate's work and provide input to

the Contracting Officer's Representatives on the quality and quantity of this work.
Mentors do *not* perform acquisition functions, such as approval of invoices

15. Technical Direction by the Contracting Officer's Representative or Mentor

The performance required by this order shall be subject to the technical direction of the Contracting Officer's Representative or Mentor as identified below. As used here, the term "technical direction" is defined as direction to the student or recent graduate that fills in details, suggests possible lines of approach, or otherwise supplements the scope of the work set forth and shall not constitute a new assignment, and does not supersede or modify any article or clause of this order.

The Contracting Officer's Representative and Mentor is not authorized to perform, formally or informally, any of the following actions:

- a. Promise, award, agree to award, or execute any contract, contract modification, or notice of intent that changes or may change this order;
- b. Waive or agree to modification of the delivery schedule;
- c. Make any final decision on any contract matter subject to the Disputes Clause;
- d. Terminate, for any reason, the student's or recent graduate's right to proceed;
- e. Obligate in any way, the payment of money by the Government. Only a warranted, Contracting Officer is authorized to obligate funds on this or any other contract action.

The student or recent graduate shall immediately notify the Contracting Officer in writing if the Contracting Officer's Representative or Mentor has taken any action (or fails to take action) or issues direction (written or oral) that the student or recent graduate considers to exceed the above limitations.

The Contracting Officer's Representative for this order is: Name:

Telephone: _____

U.S. Environmental Protection Agency

Mailing Address:

The Mentor (if different from the Contracting Officer's Representative) for this order is:

Name: _____

Telephone: _____

U.S. Environmental Protection Agency

Mailing Address:

Only the Contracting Officer may designate a new Contracting Officer's Representative. _____

16. Vaccinations and Immunizations/Medical Monitoring/Health and Safety Training A.

Vaccinations and Immunizations

i. Before beginning certain types of work, the student or recent graduate may be offered non-mandatory vaccinations, immunizations, or treatments as specified in the Statement of Work. The purpose of these vaccinations, immunizations, or treatments is to safeguard the health of those whose work may expose them to health or safety risks in the environment.

a.. EPA will bear all costs for the administrations of the offered vaccinations, immunizations, or treatments provided that the student or recent graduate receives such treatment at the time and location designated by the Contracting Officer's Representative.

b. Student or recent graduates electing to receive vaccinations, immunizations, or treatments from sources other than those designated by the Contracting Officer's Representative will not be reimbursed for any costs associated with such treatment.

ii. Students or recent graduates that elect not to receive vaccinations, immunizations, or treatments from either the Government or private source will be required to sign a form letter acknowledging that they have declined the offered treatment. A student or recent graduate who declines the vaccinations, immunizations will not be covered by the Government for costs of or treating illnesses that could have been avoided by taking the recommended immunization therapy, unless the student or recent graduate provides written documentation from a physician certifying to the student's or recent graduate's intolerance of the immunization drugs.

iii. Students or recent graduates who have already received vaccinations, immunizations, or treatments suggested by the Statement of Work may provide copies of shot records or other evidence acceptable to the Contracting Officer's Representative in lieu of receiving a new round of treatment or signing the declination letter. The Contracting Officer's Representative will retain copies of such evidence in the files related to the student's or recent graduate's work.

B. Medical Monitoring

i. Students or recent graduates whose contract requires work with or around hazardous substances, may be offered medical examinations to identify any adverse health effects related to exposure. These examinations, when offered, will be paid for by the Government.

ii. These medical examinations have been constructed in order to answer specific questions about exposure risk and health in the work place. These examinations are not meant to be "wellness" examinations. Participation in these examinations should not be construed as an adequate substitute for periodic examinations by the students' or recent graduates' personal physicians. The types of evaluations that may be performed are baseline, periodic, and exit.

- a. Baseline evaluations are done to characterize the state of health of the individual prior to commencing work in a new assignment. It may be conducted in order to assess the individual's health status in relation to the special demands of the proposed job assignment.
- b. Periodic evaluations are performed to identify and measure any adverse effects from occupational activities, and to control risks from occupational exposures.
- c. Exit evaluations are conducted when an individual terminates a given position that requires medical surveillance. This examination is performed to document the health status of the individual at the end of work in a particular position.

C. Health and Safety Training

Students or recent graduates will be expected to participate in health and safety training, at the Government's expense, to make them aware of safety programs and policies at EPA. These include initial safety, health, and environmental management training, laboratory health and safety training, and field activity training. It also includes general safety, personal protective equipment, physical hazards and chemical hazards training. This training is required under Federal, OSHA, EPA, DOT, and NRC regulations.

APPENDIX 37.1.3-F**INVOICE****Invoice No. _____****Vendor Name:****Award No. Date:****Bill to: U.S. Environmental Protection Agency Financial Management Center Mail Code
Address as shown in order _____**

WEEK 1	DATE	TIME IN	TIME OUT	HOURS WORKED
SUNDAY				
MONDAY				
TUESDAY				
WEDNESDAY				
THURSDAY				
FRIDAY				
SATURDAY				
WEEK 2				
SUNDAY				
MONDAY				
TUESDAY				
WEDNESDAY				
THURSDAY				
FRIDAY				
SATURDAY				
TOTAL HOURS WORKED THIS PERIOD:				
Hours Worked:		Rate per Hour:		Total this invoice:

Student/Recent graduate certifies this invoice does not include hours previously billed under another invoice.

Signature of Student/Recent Graduate: _____ Date: _____

Contracting Officer's Representative certifies that the service was received and accepted.

Signature of Contracting Officer's Representative: _____
date: _____

Subsection 37.2.100 – Change of Product or Service Code (PSC) (March 2016)

This policy was previously included in the Flash Notice “Guidance on Reducing Spending on Management Support Services Contracts” and “Instructions/Process for submitting the Request for Change of Product or Service Code (PSC)” form released September 2012.

37.2.100.1 Purpose.

This policy provides the guidance and procedures for changing the Product or Service Code (PSC) for any existing award (contract, task order or delivery order) that is currently coded under or proposed to change to, any of the 12 PSCs listed.

37.2.100.2 Background.

On September 7, 2012, the EPA’s Chief Financial Officer and the Assistant Administrator of the Office of Administration and Resources Management issued guidance and direction in support of the Administration’s Campaign to Cut Waste initiative. The Office of Management and Budget’s (OMB) memorandum dated November 7, 2011, same subject, directed agencies to reduce management support services contract spending in FY12 by 15 percent from their FY10 funding levels. In addition, on November 9, 2011, the President signed Executive Order 13589, “Promoting Efficient Spending,” which required agencies to reduce spending on management support services contracts for FY13 by at least 20% from the FY10 levels established in the baseline (i.e., an additional 5% reduction in FY13).

In FY12, as of September 4, 2012, EPA had spent \$134.4 million on management support services contracts. In order to achieve the 15% reduction in management support services, EPA had to obligate less than \$69 million for the remainder of the month of September FY12.

Management support services provide engineering and technical services, information technology services and program management support. The relevant contracts generally fall under one of 12 Product or Service Codes.

As part of this effort to reduce spending on management support services, it is imperative that the reported PSC data entered into FPDS is correct, accurate, and reliable. As such, any PSC changes, to new or existing contracts that fall under one of the 12 codes, must be approved by the Office of Acquisition Management (OAM) Director.

37.2.100.3 Authority/Applicability.

Reducing expenditures for management support services is an important component of the Campaign to Cut Waste and the Executive Order on Delivering an Efficient, Effective, and Accountable Government. During the White House Forum on Accountability in Federal Contracting, the Office of Management and Budget announced a goal of reducing spending on management support service contracts by 15 percent by the end of FY 2012. OMB memorandum dated November 7, 2011 directed agencies to reduce management support services contract spending in FY12 by 15% from their FY10 funding levels. The continued monitoring and reduction in management support services is still an important element in efficient government spending.

This policy applies to any existing award (contract, task order or delivery order) that is currently coded under, or proposed change to, any of the 12 PSCs listed.

37.2.100.4 Definitions [Reserved].

37.2.100.5 Policy.

This policy applies to any existing award (contract, task order or delivery order) that is currently coded under any of the 12 PSCs listed. This policy also applies to any existing award that has been coded to any other PSC and the CO proposes to change the PSC to any of the 12 PSCs listed below:

PSC	Product or Service Description
D302	ADP System Development Services
D307	Automated Information Systems SVCS
D310	ADP Backup & Security Services
D314	ADP Acquisition SUP SVCS
R408	Program Management/Support Services
R413	Specifications Development Services
R414	System Engineering Services
R421	Technical Assistance
R423	Intelligence Services
R425	Engineering & Technical Services
R497	Personal Services Contracts
R707	MGT SVCS/Contract & Procurement SUP

PSC changes which fall under one of the 12 codes must be justified and approved in accordance with the process described in 37.2.100.6.

37.2.100.6 Request for Change of PSC Procedures.

(a) The Contracting Officer (CO) must complete the form entitled, "Request for Change of Product or Service Code (PSC)" (Attachment A) and attach either a copy of the award (contract, task order, delivery order) or Performance Work Statement (PWS).

- (b) The CO shall submit the form to his/her cognizant Division Director (DD) or Regional Acquisition Manager (RAM) for review and written concurrence.
- (c) DD/RAMs shall submit the executed form to the Acquisition, Policy, and Training Service Center (APTSC) Service Center Manager (SCM) for coordination through the Director, Policy, Training, and Oversight Division (PTOD) for Office of Acquisition Management (OAM) Director approval.
- (d) Upon OAM approval, an APTSC Procurement Analyst will submit a HelpDesk ticket requesting the IT Service Center (ITSC) change the PSC on the base award.
- (e) Documentation for the change approval is returned to the CO for the official contract file.

Request for Change of Product or Service Code (PSC)

Date of Request: _____

Contracting Officer (name): _____

CO Email: _____ Phone: _____

Contract # and Title _____

Currently coded PSC (number): _____

PSC description: _____

Reason for selection of this code: _____

Request change to PSC (number): _____

PSC description: _____

Reason for PSC change request:_____

Justification/documentation attached.

- Contract award
- SOW/SOO

DD or RAM concurrence:

(signature)

(date)

APTSC SCM concurrence:

(signature) (date)

.....

PTOD DD concurrence:

(signature) (date)

.....

OAM Director Approval:

(signature) (date)

.....

Section 37.6 – Performance-Based Acquisition

Subsection 37.6.1 - Performance-Based Acquisition (December 2019)

This subsection was previously Unit 37.1 of the Acquisition Handbook.

37.6.1.1 Purpose.

This subsection provides basic principles, policies and procedures for implementing Performance-Based Acquisitions (PBA).

37.6.1.2 Background.

PBA involves acquisition strategies, methods, and techniques that communicate measurable performance objectives rather than directing methods of performance. Essentially, PBA strategies communicate the desired end result while placing the responsibility on how to perform the work on the contractor. This allows the government to adopt commercial practices, access technological innovations, maximize competition, and obtain best value.

The Federal Acquisition Regulation (FAR), Part 37, requires the use of performance-based acquisitions for services to the maximum extent practicable and prescribes policies and procedures for use of performance-based acquisition methods. Additionally, the Office of Federal Procurement Policy (OFPP) maintains policy and guidance on performance-based acquisitions at: [Office of Federal Procurement Policy Performance-Based Service Acquisition | The White House](#) The OFPP website contains current information for federal agencies on Best Practices, Guidance, Memoranda and Letters, OFPP Interagency Working Group, Reports on PBA, and Training. OFPP has issued a number of memoranda reinforcing the use of PBAs as well as mandated a government-wide PBA performance goal of fifty percent of eligible service actions. This goal is subject to change in future years.¹

37.6.1.3 Authority/Applicability.

The authority for this section is FAR Part 37. This policy applies to all service acquisitions, including those acquired under supply contracts or orders, except for those specified in FAR 37.102(a)(1).

37.6.1.4 Acronyms.

APT – Acquisition Planning Team

¹ Change Notice #18-19 issued December 18, 2018, incorporated the limitations on using qualification requirements in labor categories into EPAAG 37.6.1.7(b) from IPN 14-09 *Limitation on the Use of Qualifications in Non-Key Labor Categories in EPA Contracts* issued January 5, 2015. The limitations noted in EPAAG 37.6.1.7(b) were effective January 5, 2015.

APP - Advanced Procurement Plan
AQL- Acceptable Quality Level
PBA – Performance-Based Acquisition
PWS - Performance Work Statement
PRS – Performance Requirement Summary
QASP - Quality Assurance Surveillance Plan
SOO - Statement of Objectives
TDO – Term Determining Official

37.6.1.5 Policy.

In accordance with FAR 37.102, PBA strategies shall be utilized to the maximum extent practicable for **all** service acquisitions except those specified in FAR 37.102(a)(1) which include: architect - engineering services; construction; utility services; and services incidental to supplies. Not all acquisitions for services can be conducted in a performance-based manner. For example research and development and professional medical services do not generally lend themselves to PBA strategies. However, many services can be conducted using performance-based methods. Therefore, it is EPA policy that acquisitions in which performance-based strategies are not employed shall be an exception. This includes all types of contract actions such as task orders, Blanket Purchase Agreements, orders under non-Agency contracts, etc. The Advanced Procurement Plan (APP; see EPAAG 7.1), which is required for all high risk acquisitions and all acquisitions above the SAT, must document the details for implementing performance-based strategies or provide rationale for not using those methods. The APP discussion must be detailed, and for those acquisitions requiring an APP that are not 100 percent performance-based, the APP shall detail efforts to make portions of the acquisition performance-based. With the exception of micropurchases, for acquisitions which do not require an APP, the decision not to use PBA shall be documented in a memo for record.

37.6.1.6 Roles and Responsibilities.

Performance-based contracting is an Agency responsibility that requires the support and commitment of all parties involved in the acquisition process. As such, it should be addressed early in the acquisition planning process by the Acquisition Planning Team (APT; see EPAAG Chapter 7.1). While the APT is responsible for PBA strategies up front, there is still significant work to be performed after contract award such as monitoring and measuring contractor performance. As such, PBA shall be considered and included in all Contract Management Plans (see EPAAG Section 42).

Responsibilities for the program office and the contracting office are as follows:

1. Program office: The program office is responsible for defining the requirement, including an assessment of the risk that the government might assume when relying on commercial specifications and common marketplace performance and quality standards. The program office shall conduct market research which shall be used to develop a Performance Work Statement (PWS) or Statement of Objectives (SOO) with measurable performance standards. The program office shall develop a Quality Assurance Surveillance Plan

(QASP) for all PBAs over the SAT unless a QASP will be submitted as part of the contractor's proposal. After contract award, the Contracting Officer's Representative (COR) is responsible for assessing contractor performance against contract performance standards and in accordance with the QASP.

2. Contracting office: The Contract Specialist (CS) and Contracting Officer (CO) are the government's principle business advisors and are responsible for developing the solicitation, conducting the source selection, and managing the resultant contract and business arrangement. The CS and CO are responsible for researching contracts in the marketplace to identify general business practices such as commercial terms and conditions, contract type, bid schedule breakout, and the use of incentives. Additionally, they are responsible for ensuring the sufficiency of PBA requirements submitted with the procurement package and in the resultant contract. After contract award, the CO is responsible for ensuring the QASP is properly implemented and incentives and/or remedies are applied as necessary.

37.6.1.7 Performance-based Acquisition Policy.

- (a) **Policy:** FAR 37.6 requires the use of either a PWS or a SOO when acquiring services using performance-based acquisition methods. It further prescribes that PBAs include measurable performance objectives, a method of assessing contractor performance against the objectives, and performance incentives where appropriate.
- A **PWS** is a statement of work that describes the required results in clear, specific and objective terms with measurable outcomes. The PWS communicates the government's desired end result rather than dictating how to accomplish the work. (See section 37.6.1.7(e) for more info.)
- A **SOO** is a government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the government intends to provide the maximum flexibility to each offeror to propose an innovative solution. The contractor is responsible for proposing the outcomes necessary for the agency to achieve the performance objectives. Based on proposed solutions and existing commercial practices, the offeror's proposal must contain a PWS, performance metrics, performance measures, and a QASP, all of which shall be evaluated before contract award and incorporated into the resulting contract. (See section 37.6.1.7(f) for more info.)
- **Measurable performance standards** define acceptable performance through the use of verifiable, objective, attainable metrics which are not overly burdensome to apply. (See section 37.6.1.7(c) for more info.)
- **Incentives** are not mandatory, but should be used when appropriate to encourage performance that will exceed performance standards. (See section 37.6.1.8)

- **Remedies** are procedures that address how to manage performance that does not meet performance standards. Incentives and remedies should complement each other. (See section 37.6.1.8)

In determining whether to use a PWS or SOO, acquisition planners must take into consideration that the use of a SOO requires a significant effort on the part of contractors to propose to the government. A SOO also requires a substantial effort on the part of the government to evaluate an array of different approaches or solutions. The team will have to understand the contractor-proposed solutions, assess the associated risks and likelihood of success, identify the discriminators, and do a best-value analysis. Regardless of whether a PWS or SOO is used, the first step in a PBA is defining the requirement. A comprehensive analysis is necessary to determine the desired contract outcome and performance objectives. Basic steps in the analysis include the following:

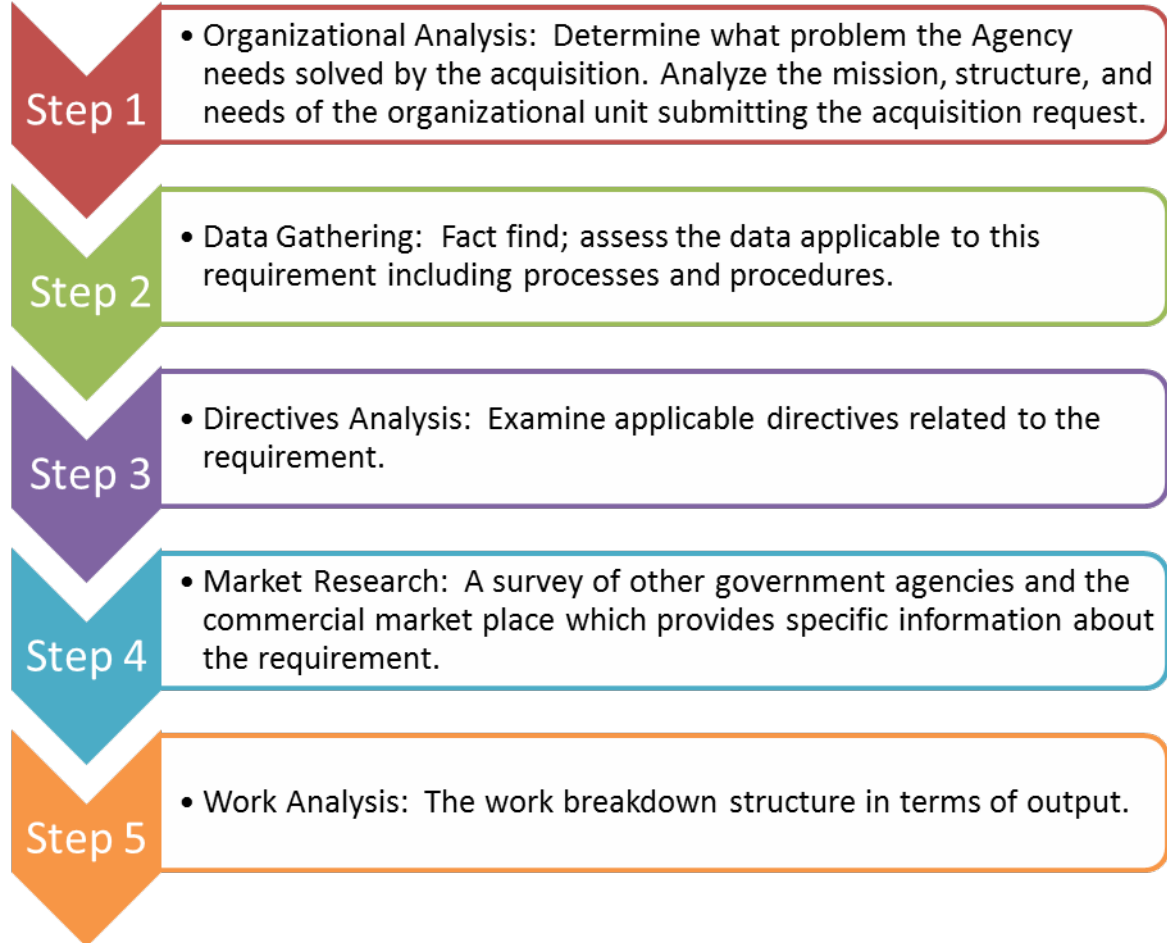
- (b) **Defining the Requirement:** The first step in writing a PWS or SOO is to define the requirement. This is done by performing an analysis of the overall requirement to establish desired outcomes. This analysis should list the end results that need to be accomplished in order to satisfy the overall requirement. It is important to determine all dependent variables (what, when, where, who, quantity, quality levels, etc.) to ensure that all unique requirements have been considered. The level of analysis varies depending on the complexity of the requirement, and there are numerous methods of performing the analysis. Details on the various methods can be found in [The Steps to Performance-based Acquisition](#) guide. Regardless of the method used, it is important to define how the desired end results are linked to overall Agency mission and performance objectives.

Minimum qualification requirements (e.g. education and experience levels) in non-key labor category descriptions should no longer be specified. Labor category descriptions should be limited to describing duties and responsibilities for such labor categories. If it is determined that minimum qualification requirements in non-key labor categories are necessary and labor category descriptions cannot be written to describe only the duties and responsibilities of the labor category, such qualifications may be included, but the CO shall make a determination and document their decision in the file. The CO shall ensure that the contract terms and conditions are written so as to ensure the government can validate that contractor individuals billed under labor categories meet all minimum qualifications in accordance with FAR 52.232-7(a) or FAR 52.212-4(i) Alternate 1.

For some requirements, acquisition planners may simply be reviewing previous requirements for validity and accuracy. At the end of the analysis process, acquisition planners will be able to answer the following questions which can then be used to develop the PWS or SOO, measureable performance objectives and the QASP.

- What must be accomplished to satisfy the requirement?
- What tasks must be accomplished to arrive at the desired outcomes?
- When or how will the government know that the desired outcome has been satisfactorily achieved, and how much deviation from the performance standard will the government allow the contractor, if any?

One effective method of analyzing the requirement is to do a job analysis such as that detailed in the chart below.



Step 1-Organizational Analysis: The first step in conducting the job analysis is to analyze the organizational unit supported by the required services to determine its missions, structure and needs. The key question to address is, “What does the Agency want to achieve in terms of outcomes?” Once that question has been addressed, the APT should write a general purpose statement describing the objective of the procurement.

Step 2-Data Gathering: The next step is gathering data. The gathered data is related to workload, facilities, processes, procedures, laws and regulations, and resources. This data is critical to performing a proper job analysis and developing the subsequent PWS as well as providing data to prospective contractors to enable them to submit accurate proposals. Data gathering should include an examination of the facilities, data, and equipment currently being used, as well as an analysis of the benefit to the government of providing all or some of the data to the contractor. For example, in the case of a facilities maintenance contract, the government would want to consider giving a history of service calls to prospective contractors. If any changes affect the contractor (i.e., changes to the government furnished equipment), they must be factored into the data collected. Other data to consider gathering or developing include resource data such as types of personnel currently used and any mandatory qualifications such as security clearances or licenses.

Step 3-Directives Analysis: This step involves the examination of all current directives applicable to the services being acquired. The PWS must contain all relevant directives and reference documents. For directives that apply in part, the PWS should cite the pertinent portion of the directive. The APT should ensure only directives that are absolutely necessary are included in the PWS. The application of too many directives could result in excessive costs and restriction of the contractor's innovative approach.

Step 4-Market Research: FAR Part 10 requires market research be conducted for all acquisitions in excess of the SAT. Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs. One of the key benefits of market research is leveraging existing acquisition solutions in both the private and public sector. By utilizing existing sources and solutions, the government saves time and money. The entire APT is responsible for conducting market research. Detailed information on how to conduct market research can be found in [The Steps to Performance-based Acquisition](#) guide. Posting a sources sought synopsis and/or a draft solicitation are valuable tools during the market research stage; however, these alone do not constitute market research, but rather, are done in conjunction with market research. Key findings of market research include but are not limited to the following. The acquisition planning team shall consult FAR 10.001(a)(3) to ensure all market research requirements are met.

- A determination as to whether the service is commercially available
- Knowledge of what current solutions are available in the marketplace
- Insight regarding price expectations
- Information in latest technology and market trends
- Availability of sources to meet the need including size status of sources
- Standard commercial terms and conditions such as type of contract, warranties, buyer financing, maintenance and packaging, etc.
- Use of recovered materials
- Practicality and justifications for bundling

A comprehensive market research report detailing the method of research, the specifics regarding the private and public resources from which information was gathered, and the results of the research shall be included in the official contract file for all service acquisitions over the SAT. Additionally, a summary of the market research shall be included in the APP.

Step 5-Work Analysis: The final step is the work analysis which is a breakdown of the work structure expressed in terms of output. It is critical at this stage that acquisition planners focus on the outcome rather than how to perform the work. The organizational analysis, data gathering, directives analysis and market research all factor in the work analysis. To complete the work breakdown structure, the work inputs, work steps and work outputs must be identified.

- Work inputs: Actions, documents, personnel, equipment, facilities, and any other resources necessary to perform the services.
- Work steps: Actions that will be taken by the contractor in order to achieve the product or outcome. (The method of completing the work steps, or the “how to” will be determined by the contractor).
- Work output: Items produced as a result of completing the work steps.

(c) **Measurable Performance Standards:** After performing the job analysis to define the overall requirement, acquisition planners will be able to identify what standards must be met in order to achieve acceptable performance. This stage of the process is essentially answering the question as to when or how the government will know the outcome has been satisfactorily achieved. It also defines what if any deviations from the performance standard the government will allow. All performance standards include a plan to objectively measure results; no subjective criteria should be used. Once defined, this information will be communicated to the contractor in the PWS using a Performance Requirement Summary (PRS) which is discussed in more detail in paragraph (d) below.

When establishing performance standards, it is important that acquisition planners ensure that each standard is necessary and carefully chosen. Standards should not be unduly burdensome or restrictive. Overly restrictive standards are pricey and often result in delivery of unnecessary requirements at a high cost. It is not necessary to assign a performance standard for every task identified in the job analysis. The performance objectives of lower tasks may be inherent in the higher level tasks and thus rolled into one overall objective.

Acquisition planners will also need to identify whether a performance standard should include an Acceptable Quality Level (AQL). AQLs constitute a minimum level of performance and are typically stated as a percentage of required conformances (e.g., clean 95% of the time) or as a number of permissible deviations (e.g., one error per specific time period). The AQL essentially answers the question, “What is the minimum quality level necessary to meet the mission requirement?” Not every performance standard will require an AQL. When a performance standard does not allow for any deviation in meeting the requirement, then an AQL is not necessary. Similar to establishing performance standards, when establishing AQLs, acquisition planners must be careful not to establish an AQL that is higher than the government’s actual need. The closer to perfection the requirement is defined, the higher the cost. Conversely, the AQL should not be set too low or it could deter the contractor from striving for superior performance. The key to establishing good performance standards and AQLs is identifying the government’s actual need in the job analysis.

One of the easiest ways to establish performance standards and AQLs is to use the existing commercial standards which were identified during the market research step of the job analysis. Many commercial industries have already identified quality standards for their industry, so there is no need to develop new standards. The International Standards Organization, the Building Owners and Managers Association, the Software Engineering Institute, and the Professional Grounds Management Society are just a few

examples of commercial organizations with quality standards. With sufficient market research, acquisition planners should be able to identify commercial quality standards for the service being acquired.

Another method of establishing performance standards and AQLs is to have the contractor propose the metrics and methods of surveillance. This is especially suitable when using a SOO. If this approach is used, it must be evaluated as part of the offeror's proposal and subsequently incorporated into the resulting contract. If the APT chooses to develop its own standards, it is a good idea to obtain industry input to ensure the measures are realistic and effective. This can be done by communicating with industry early in the process such as in meetings or draft solicitations. For more information on communicating with industry, see the [EPA Vendor Communication Plan](#) which can be found on the Office of Acquisition Solutions (OAS) intranet under A-Z Topics.

Examples of measurable performance standards and AQLs include the following:

- Response times, delivery times, timeliness – meeting deadlines or due dates, adherence to schedule.
- Error rates – number of mistakes/errors allowed in meeting the performance standard.
- Accuracy rates – similar to error rates, but most often stated in terms of percentages.
- Completion milestone rates – x percent complete at a given date.
- Cost control – keeping within estimated cost or target costs. Applies in cost-reimbursement contract.

- (d) **Performance Requirements Summary:** As noted above, once the performance standards and AQLs are established, they must be included in the PWS along with an explanation as to how they will be measured (if using a SOO, they are included in the resulting PWS that is incorporated into the contract). This is accomplished through the use of a PRS. The PRS is the baseline for the PWS and will communicate the desired outcomes, performance standards and AQLs that have been identified in the above processes as well as the method of surveillance and any applicable incentives. The PRS should be brief and capture the salient characteristics of the contract requirements which will be described in greater detail in the PWS. The following table shows the typical elements of a PRS; however, every PRS will be different as it will be tailored to the acquisition.

Sample PRS Matrix

Performance Objective	Performance Standard	Acceptable Quality Level	Method of Surveillance	Incentive

Below is a sample of what a PRS without any incentives might look like.

Sample PRS for a Call Center

Performance Objective	Performance Standard/AQL	Method of Surveillance
Provide timely and efficient service	75% of technical support questions resolved within eight working hours; remaining 25% of technical support calls resolved within 24 working hours.	Review contractor records.
Ensure customers are satisfied with service.	At least x% of customers contacted must be satisfied with service.	Review and validate customer surveys. Conduct independent surveys.
Maintain all equipment and materials.	Equipment failures, non availability, or maintenance shall not interfere with operations for more than x minutes during a month (day, etc.).	Random inspection; audit or review by third party.
Develop and conduct a customer outreach program.	Perform at least x% of the required program each month, with at least x% of the program having been completed at the end of each year.	Review contractor records, sample products. Review the effect on call volume in call records.

- (e) **PWS Format:** The analysis performed to define the requirement is the foundation for writing the PWS. As mentioned previously, it is critical that the PWS is written in terms of results as opposed to detailing the process to be performed. For example, for equipment maintenance, the PWS would be written such that the contractor will maintain equipment operability consistent with the industry standard that was identified during market research. When labor categories are included in a PWS, they must be defined by duties and responsibilities rather than by personnel qualifications unless personnel must have certain qualifications. For example, for electrical work, it may be necessary to specify a licensed electrician perform the work; however, before specifying a qualification, first identify whether the qualifications are already identified in the industry standard or other guiding regulation that is referenced. This goes directly to the basic PBA premise of allowing the contractor to determine how to perform the work rather than the government dictating how it should be done. The PWS shall describe the requirement in terms of measureable results, detail how the work will be assessed and provide incentives if appropriate. The following are common elements in all PWSs, including those used to award a task order under a task order contract.

- (1) **Introduction.** Describes program goals, desired results to be achieved, interfaces that must be considered, and any previous problems that have been encountered (e.g., any known phenomena, techniques, methodology, or results of related work). Keep this section succinct and to the point.
- (2) **Scope of Work.** This is a summary section that briefly describes the purpose of the current work and the desired outcome. It should also establish such general requirements when applicable such as place of performance, normal work hours, Service Contract Act, etc.
- (3) **Requirements.** This portion is basically transference of the Performance Requirement Summary into the PWS. Specify standards to which the requirement must be completed. Include historical data on previous contracts or work by in-house personnel that may be necessary for a contractor to adequately prepare a proposal. For example, in a call center contract, it may be necessary to provide the average number of calls. Consider that a contractor will have a greater chance at success with adequate information that clearly defines the magnitude, quality, and scope of each outcome.
- (4) **Data Requirements.** This section contains information on data requirements, such as reports. Acquire only the data that are absolutely necessary. The usual rule of thumb is to limit data to those needed by the government to make a decision or to comply with a higher level requirement. Data should be consistent with the federal government's open data policy pursuant to [Executive Order of May 9, 2013, Making Open and Machine Readable the New Default for Government Information.](#)
- (5) **Attachments, Appendixes, and Exhibits.** Through preliminary research and acquisition planning, the APT should already have screened potentially relevant and necessary directives (e.g., the government, EPA, and federal agencies). If only a portion of a directive is pertinent, do not reference or include it in its entirety. Instead, excerpt only required parts of the directive into the PWS. Consider that the number of directives referenced should be few and should be restricted to those necessary as sources of such vital information as task descriptions, quality standards, and statutory or regulatory limitations. Many undesirable consequences can result from excessive or inappropriate application of directives, such as confusion or error due to conflicting guidance or unintentional direction buried within the document. If the government specifies "how to perform," even within the context of one or more published documents, it may assume outcome responsibility. Any essential document referenced in the solicitation should be furnished either with the solicitation or made available at a specified location noted in the solicitation. Remember to include the date or version of each document.
- (6) **Schedules or Period of Performance.** This PWS section provides a realistic delivery schedule for contractor performance and completion. Provide sufficient detail for the contractor to establish specific, detailed milestones against which progress can be measured.

- (f) **SOO Format:** There is no set format for a SOO, but FAR 37.602(c) states the following elements must be included:

- (1) Purpose
- (2) Scope or mission
- (3) Period and place of performance
- (4) Background
- (5) Performance objectives, i.e., required results; and
- (6) Any operating constraints

The government-prepared SOO shall be incorporated into the RFP as an attachment. At contract award, the contractor-proposed PWS must be incorporated into the contract as an attachment.

37.6.1.8 Incentives and Remedies.

- (a) **Incentives:** Incentives are not unique to performance-based contracts. They are an inherent part of every contract in that the contract itself motivates successful performance—contractors who do not perform do not get paid. However, the use of additional incentives beyond basic payment can motivate the contractor to achieve superior performance (when superior performance is warranted). As can be seen in the chart below, incentives can be monetary, non-monetary, and can be based on cost, schedule or quality of performance. Application of predetermined, formula type positive and negative incentives shall be consistent with the requirements specified in FAR 16.402.

Incentive	Performance Incentive
Award Fee	<p>Fee dollars are directly linked to achieving or exceeding standards. A specific fee can be tied to a specific achievement/performance standard. Fee dollars may also be associated with a target fee amount or target fee pool where the amount of fee is adjusted upwards or downwards based upon the contractor achieving performance standards.</p> <p>In considering whether to use an award fee, acquisition planners should take into account whether the value of the incentive outweighs the resources necessary to administer an award fee type contract.</p>
Award Term	<p>Award-term arrangements are very similar to award-fee contracts; however, instead of money as compensation for superior performance, the contractor is awarded additional periods of performance. Or, if performance is habitually below standard, the period of performance can be shortened.</p> <p>Award-term arrangements are most suitable when establishment of a long-term relationship is valuable both to the government and to the potential contractor. They differ from options in that award terms are based on a formal evaluation process and do not entail the regulatory procedures associated with priced options.</p>

	Award term arrangement require both an Award Term Incentive Plan pursuant to EPAAR 1516.401.70; and a Quality Assurance Surveillance Plan pursuant to FAR 46.4 and EPAAG 37.6.1.9.
Payments	When performance exceeds standards, pay x% of monthly payment into a pool. If performance is below standard, x% of that monthly payment is withheld. At the end of y months, pay the contractor the amount accrued in the pool. Payment may also be made when the contractor has accrued x dollars in the pool.
Surveillance/ Monitoring	Adjust surveillance or contractor reporting based on contractor performance exceeding standards or not exceeding standards over a period of time.
Past Performance	After documenting past performance in the government wide CPARS system in accordance with FAR Subpart 42.15 and EPAAG Chapter 42.15; contractor performance information reflecting whether the contractor failed to meet, met, or exceeded standards may be a very effective incentive due to its use in making decisions such as awarding options and future contract awards.
Schedule	Schedule incentives focus on getting a contractor to exceed delivery expectations. They can be defined in terms of calendar days or months, attaining or exceeding milestones, or meeting rapid-response or urgent requirements.

When contemplating whether or not to use an incentive, it is important to decide what if any benefit the enhanced performance will provide to the government. For example, the benefit of having a contractor deliver early may not outweigh the cost of the incentive. It is also important to ensure the incentive is realistic, attainable, and consistent with the value of the contract. Be sure to tie the incentive to the performance objectives and standards. When considering the use of incentives, ensure all requirements of FAR Subpart 16.4 are met. A positive incentive is generally not appropriate unless—

- a. Performance above the target level is of significant value to the Government;
- b. The value of the higher level of performance is worth the additional cost/fee;
- c. The attainment of the higher level of performance is clearly within the control of the contractor; and
- d. An upper limit is identified, beyond which no further incentive is earned.

The following questions can help in deciding what if any incentive to use.

- Will enhanced performance provide additional value to the mission?
- Which areas of the requirement would benefit most from enhanced performance?
- Which areas do not need added incentives (or which areas can do without them)?
- How much is the Agency willing to pay to achieve a level of performance beyond the performance standard?
- Do contractors within the particular industry prefer additional performance periods (award terms) in lieu of monetary incentives (award fees)?

- Is the incentive affordable? Will it affect timelines or schedules in a positive way? Adversely?

When using performance and delivery incentives, FAR 16.402-1(a) requires, “No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).” A cost incentive is an adjustment of profit or fee intended to motivate the contractor to control costs. A cost constraint is a stated limit that the contractor exceeds at his or her own risk. When using cost incentives, a formula is included to determine the fee earned by the contractor based on the actual performance results achieved. Elements of cost incentives vary; however, they include target costs, target fees, minimum/maximum fees, sharing arrangements, and contract ceilings. Since these types of contracts already include a cost incentive, performance and delivery incentives may be included when beneficial. Fixed-price type contracts automatically contain a constraint on cost because all cost risk falls on the contractor. Based on this inherent cost constraint, performance and delivery incentives may also be used in all types of fixed-price contracts. In the case of time-and-material or labor-hour contracts, some type of cost constraint must be included in the contract in order to use performance and delivery incentives. Examples of constraints for these types of contracts include fixed unit prices, fixed rates, and established ceiling prices.

Remedies: Government contract remedies are forms of relief that can be pursued for contractor non-performance or non-compliance with the contract’s terms and conditions. These forms of relief are provided by contract clauses or from the basic rights of Government and commercial contract law. Examples of remedies include liquidated damages, re-performance and termination for cause/default. Any remedies included in the QASP must align with the clauses in the contract. The overarching goal of a remedy is to ensure the government does not pay for services that do not meet performance standards. Since the purpose of a remedy is to correct the problem rather than penalize the contractor, the preferred remedy is re-performance. However, there are times when a reduction in price may be appropriate such as when the contractor’s lack of performance causes harm or damage to the government. In those cases, appropriate liquidated damages clauses should be included in the contract (see FAR Subpart 11.5 for situations when liquidated damages are appropriate). Regardless of what type of remedy is used, it is important that the contract clearly spell out what the acceptance procedures are and how the government intends to address less-than-satisfactory performance. In the case of commercial contracts, the government should rely on the contractor’s quality assurance system as a substitute for acceptance procedures.

37.6.1.9 Contractor Performance Management.

- (a) **Requirement:** FAR Part 46 prescribes policies and procedures to ensure contractor performance under government contracts conforms to contract requirements. This is done through the use of a QASP which is required by FAR 46.4. FAR 46.401(b) requires that each contract shall designate the place(s) where the government reserves the right to perform quality assurance. EPAAG 46.2.1 provides guidance for use of higher-level contract quality requirements in acquisitions. In accordance with FAR 37.604, the government may either prepare the QASP or require offerers to submit a proposed QASP

as part of their proposals. The QASP is a living document that should be reviewed and updated as necessary.

- (b) **Developing the QASP:** In performance-based contracting, the contractor is responsible for quality assurance, and the government evaluates the contractor's performance through appropriate assessment methods that are included in the QASP. The QASP describes how government personnel will evaluate and assess contractor performance. It should be prepared in conjunction with the PWS and include one or more methods of assessment for every performance objective listed in the Performance Requirements Summary. The following are common types of assessment methods:

- **Inspection:** Inspection can be 100 percent or periodic. When using inspection as a method of assessment, the government should be careful to ensure that the contractor relies on its own quality control rather than the government's inspection to ensure quality. Cumbersome and intrusive surveillance methods should be avoided. The government is seeking to assess the contractor's performance and is not providing oversight.
- **Random sampling:** Random sampling is a statistically based method that assumes receipt of acceptable performance if a given percentage or number of scheduled assessments is found to be acceptable. Random sampling is the most appropriate method for frequently recurring tasks. It works best when the number of instances is very large and a statistically valid sample can be obtained.
- **Periodic Sampling:** Periodic sampling is similar to random sampling, but it is planned at specific intervals or dates. It may be appropriate for tasks that occur infrequently. Selecting this tool to determine a contractor's compliance with contract requirements can be quite effective because it allows for assessing confidence in the contractor without consuming a significant amount of time.
- **Trend analysis:** Trend analysis is the process of collecting information and attempting to spot a pattern or trend. It can be used to assess the contractor's ongoing performance over time. This type of assessment can be formed by building a database from data gathered through performance assessment. Additionally, contractor-managed metrics may be used in the analysis. The database should be created and maintained by government personnel.
- **Customer feedback:** Customer feedback is firsthand information from the actual users of the service. It should be used to supplement other forms of evaluation and assessment, and it is especially useful for those areas that do not lend themselves to the typical forms of assessment. However, customer feedback information should be used prudently. Sometimes customer feedback is complaint-oriented, likely to be subjective in nature, and may not always relate to actual requirements of the contract. Such information requires thorough validation.

- **Third-party audits:** The term “third-party audits” refers to contractor evaluation by a third-party organization that is independent of the government and the contractor. All documentation supplied to, and produced by, the third party should be made available to both the government and the contractor.

It is acceptable and encouraged to use a variety of assessment techniques. It is important to keep in mind that the degree of performance assessment should be based on the criticality of the service or task and on the resources available to accomplish the assessment. The greater the difficulty or criticality, the more performance assessment may initially be necessary. The method and degree of assessment may change over time in relation to the evaluator’s level of confidence (high or low) in the contractor’s performance. If the method of assessment does change, the QASP must be updated and provided to the contractor. Questions to ask when determining the appropriate assessment type to use include the following:

- What is the most effective way to assess the contractor’s performance outcomes in relation to the associated performance standards?
- How critical is this particular task to the requirement and to the overall mission?
- Is performance assessment critical to a particular task, and is it worth the government’s time and effort?
- How long should the assessment period be? How is this linked to the criticality of the task? How frequently should performance assessment take place?
- What are the availability personnel who will be performing the assessment? Are there enough evaluators to carry out the degree of evaluation contemplated?
- Do the proposed evaluation methods represent a common commercial practice for the particular service area?

(c) **QASP Format:** The following is the required format for the QASP.

1. **Purpose:** Outlines the purpose of the QASP in terms of performance management approach and performance management strategy.
2. **Roles and responsibilities:** Defines the roles and responsibilities of the government and the contractor.
3. **Contract requirements:** Description of the required service(s) or supply(ies); include task or order number, or some other explanation of the source.
4. **Performance standards:** Provides the same performance objectives and thresholds that are stated in the performance requirements section of the PWS. Performance standards define desired services. The government performs surveillance to determine if the contractor exceeds, meets, or does not meet these standards.
5. **Performance indicators:** Description of the error rate, downtime, response time, failure to pass inspection, successful performance, or some other established measure.

6. **Acceptable quality levels (AQLs):** Minimum levels of acceptable performance that the contractor must meet and still be considered a satisfactory performer.
7. **Methods of surveillance:** Specifies the mix of existing management information systems, random sampling, periodic inspection, 100 percent inspection, and customer feedback to properly monitor performance and quality.
8. **Method of documenting contractor performance:** Describes the process for documenting contractor performance. This process must properly align with the method of surveillance.

(d) **Award Term Incentive Plan and the Quality Assurance Surveillance Plan:**

The Award Term Incentive Plan is a separate requirement from the Quality Assurance Surveillance Plan. The Award Term Incentive Plan is discussed in EPAAR 1516.401-70 (c) and EPAAG 37.6.1.8(a). The Quality Assurance Surveillance Plan is discussed in FAR 46.4 and EPAAG 37.6.1.9.

CHAPTER 39 – ACQUISITION OF INFORMATION TECHNOLOGY

Section 39.1 – General

Subsection 39.1.1 –Information Technology Acquisition Approval Procedures (April 2018)

39.1.1.1 Purpose.

The purpose of this subsection is to establish approval requirements for information technology (IT) acquisitions at EPA in accordance with the Federal Information Technology Acquisition Reform Act (FITARA), which states that agencies “may not enter into a contract or other agreement for information technology or information technology services, unless the contract or other agreement has been reviewed and approved by the agency Chief Information Officer.”

39.1.1.2 Background.

FITARA was passed in December 2014 as Subtitle D of the 2015 National Defense Annual Appropriations bill. The Office of Management and Budget (OMB) Memorandum M-15-14, *Management and Oversight of Federal Information Technology*, was subsequently published providing guidance to agencies in implementing FITARA requirements.

Consequently, the Offices of Acquisition Management and Environmental Information jointly issued Interim Policy Notice 15-07, *Approval of Information Technology Acquisitions*, developed to implement the FITARA requirements. This subsection finalizes the IPN as an amendment to the EPAAG.

39.1.1.3 Authority/Applicability.

(a) Authority.

The authority for this policy is Subtitle D - Federal Information Technology Acquisition Reform of the National Defense Appropriations Act of 2015 (*Pub. L. 113-291*), and OMB Memorandum M-15-14, *Management and Oversight of Federal Information Technology*.

(b) Applicability.

This policy applies to:

- (1) All contracts, purchase orders, task orders, delivery orders, work assignments, purchase card transactions and interagency acquisitions (both direct and assisted) that include the acquisition of IT hardware, software and services;
- (2) Modifications outside the scope of the original contract/order that increase the amount of IT supplies or services to be acquired;

- (3) Acquisitions that are not *primarily* for IT, but for which IT products or services are included as a secondary or ancillary part of the requirement such as contractor purchases under Other Direct Costs, and
- (4) Acquisition of IT equipment or software by a contractor, to be provided to the Government under an existing contract, that was not previously approved under this policy.

This policy does not apply to:

- (1) IT training;
- (2) Data entry and retrieval;
- (3) Federal spectrum licenses;
- (4) Contracts that require the *use* of IT, but not IT development, hosting, or maintenance. For example, a FITARA review is not required for a contract that requires a contractor to use a certain software package for statistical analysis but has no other IT requirement; and
- (5) Incremental funding within the scope of already approved contracts/modifications, exercise of option periods or quantities, or other administrative type modifications, unless otherwise indicated in the FITARA approval letter.

39.1.1.4 Definitions [Reserved].

39.1.1.5 Policy.

To implement the requirements of FITARA, approval for all acquisitions containing IT hardware, software, and services shall be obtained from the Chief Information Officer (CIO) or a delegated representative in accordance with Attachment 39.1.1-A. EPA personnel must comply with these approval requirements prior to the acquisition of IT.

39.1.1.5.1 Program Office Review Responsibilities

The requiring official, typically the Contracting Officer's Representative (COR), is responsible for submitting a request to procure IT and obtaining approval in accordance with the procedures contained in this subsection. The FITARA approval requirements apply regardless of dollar value or if the IT is being purchased by contractors under Other Direct Costs.

After approval is received from the CIO or designated delegate, a copy of the approval shall be included with the Advanced Procurement Plan (APP), if an APP is required in accordance with EPAAG 7.1.1. A copy of the approved APP must be sent to the contracting office. If an APP is not required, a copy of the approval shall be included with the requisition or provided directly to the purchase cardholder if applicable.

When creating the requisition in the EPA Acquisition System (EAS), the estimated dollar value of any IT that falls under the requirements of this subsection must be entered in the appropriate space. If IT is not being purchased then “\$0” must be indicated.

39.1.1.5.2 Contracting Officer Verification Responsibilities

In accordance with EPAAG 7.1.1.5.6, *Procurement Package*, contracting officers are responsible for verifying that a complete procurement package has been submitted. Contracting officers must verify whether an approval to purchase IT has been included in the Advanced Procurement Plan (APP) or attached to the requisition if an APP is not required.

No solicitation may be issued until the appropriate IT purchase approval has been received by the contracting officer. If an IT purchase approval document has not been received, the program office must be contacted immediately to obtain a copy of the approval.

If IT purchase approval is required and the program office will not provide a copy of the approval, contracting officers must not proceed with the acquisition until the program office complies with the policy and submits the IT purchase approval. Any questions regarding the requirement for IT purchase approval can be forwarded to the CIO via the e-mail address: FITARA.review@epa.gov.

Contracting officers must file a copy of the IT purchase approval in the contract files.

Prior to award, contracting officers must indicate in EAS the dollar amount of the IT to be purchased. If IT is not being purchased then “\$0” must be indicated in EAS.

39.1.1.5.3 Purchase Cardholder Responsibilities

In accordance with the attached *IT Acquisition Approval Process*, IT actions at or below the micro-purchase level require approval for the IT acquisition from the Senior Information Officer (SIO), Information Management Officer (IMO), or other designee in accordance with the Program Office or Region’s existing approval process. A copy of the IT purchase approval must be provided to the purchase cardholder.

The purchase cardholder must ensure that an IT acquisition approval has been received before making the purchase. If an IT purchase approval document has not been received, the program office must be contacted immediately to obtain a copy of the approval. Purchases cannot be made until written approval has been received.

The purchase cardholder must include the documented approval in the purchase card file.

39.1.1.6 Websites.

For additional information on the approval process, please contact the FITARA [website](#).

For questions about the approval process, please contact FITARA-review@epa.gov.

ATTACHMENT 39.1.1-A

IT ACQUISITION APPROVAL PROCESS

Categories of IT Acquisitions

For consistency in the approval process, IT acquisitions at EPA have been grouped into the following categories:

- (a) Pre-approved IT procurements
- (b) IT Acquisitions at and Below the Micro-Purchase Threshold
- (c) IT Hardware
- (d) Non-traditional IT Hardware
- (e) Database/library subscriptions
- (f) IT Software – Licenses and Maintenance (No Configuration or Development)
- (g) IT Services – Operations & Maintenance (O&M) on Existing IT Systems
- (h) IT Services – Software Configuration and/or System Development
- (i) IT Hosting

The approval process and approval level required for each category of IT acquisition is described in detail within.

Questions

For questions about this approval process, please contact FITARA-review@epa.gov.

(a) Pre-Approved IT Procurements

The CIO has designated the following procurements as pre-approved from a FITARA perspective. Therefore, no approval is needed from the CIO or CIO staff; however, Program Office or Region approval processes may still apply.

- Laptop/desktop computers purchased in compliance with the configuration standards and acquisition vehicles cited in OMB's M-16-02, Category Management Policy 15-1: *Improving the Acquisition and Management of Common Information Technology: Laptops and Desktops* (<https://www.whitehouse.gov/omb/memoranda/#memoranda-2016>).
- Procurements made via the following acquisition vehicles:
 - E-Business (<https://ebusiness.epa.gov>)
 - Emergency Response equipment BPAs (<http://oamintra.epa.gov/?q=node/744>)
 - Enterprise Voice Services (<http://oamintra.epa.gov/?q=node/736/>)
 - Managed Print Services (<https://oamintra.epa.gov/node/661>)
 - ITS-BISS Certification and Accreditation Services
 - Microsoft Enterprise License (<https://oamintra.epa.gov/?q=node/768>)
 - Agency-wide Cisco Smartnet Maintenance
 - ORD's contract for Student Services/Personal Services
 - Any other EPA-approved Strategic Sourcing vehicles for IT (<https://oamintra.epa.gov/node/660>)
- Actions needed to execute contract which has received FITARA approval. For example, once an acquisition is approved, subsequent in-scope incremental funding, exercise of options, or work assignments do not require further approval (unless otherwise noted in the FITARA approval letter)
- Procurements made via the Working Capital Fund in e-Business (<https://ebusiness.epa.gov/>).

Note: This list is subject to change. Please check the FITARA [website](#) for the most up-to-date list.

(b) IT Acquisitions at and Below the Micro-Purchase Threshold

(The micro-purchase threshold is listed in Subpart 2.1 of the Federal Acquisition Regulation (FAR).

Approval Needed:

Senior Information Officer (SIO), Information Management Officer (IMO), or other designee.

Process:

- (1) Obtain approval for the IT acquisition from your SIO, IMO, or other designee in accordance with your Program Office or Region's existing approval process and provide a copy to the contracting officer or purchase cardholder as applicable.
- (2) The contracting officer or purchase cardholder must include documented approval in the contract or purchase card file.

(c) IT Hardware

Approval Needed:

Office of Information Technology Operations Director or
Office of Information Technology Operations Deputy Director

Process:

1. Send an email request for approval as follows:
 - **To:** FITARA-Review@epa.gov
 - **Subject:** FITARA Request for Approval: [description of IT equipment]
 - **Description:** Provide a description of the needed IT equipment and its intended use.
 - **Items:**
 - Provide item title/description for each item.
 - Provide quantity requested for each item.
 - Provide estimated unit price for each item.
 - Provide estimated total price.
 - New or Maintenance? (Is this new hardware or maintenance of existing hardware)?
 - **Strategic Sourcing:** Provide a statement as to whether strategic sourcing vehicles were considered. Identify if a strategic sourcing or other existing EPA contract will be used to acquire the hardware. Please refer to EPA's Strategic Sourcing Page at <http://oamintra.epa.gov/node/660>.
 - **Does this item require a waiver?** If so, please attach the waiver.
 - **Competition:** Provide a statement whether the IT equipment is being limited to a specific brand name item or sole source vendor. If so, provide a brand name justification and/or sole source justification as applicable.
 - **Sustainability:** Provide a statement whether IT equipment will be acquired as "green" (e.g., indicate whether the procurement complies with any of the following programs ENERGY STAR, EPEAT).
 - **IPv6:** Confirm whether the equipment to be purchased is IPv6 compliant
 - **Accessibility:** Provide a statement whether IT equipment will be acquired as Section 508 compliant. If not, provide details on the exception to Section 508 accessibility requirements.
 - **Other:** Provide any additional information necessary about the acquisition.
 - **Disclaimer:** Provide the following statement in all requests for approval: "This email may contain source selection information and should only be released within the Government to those who have a bona-fide need to know. Unauthorized release of source selection information is prohibited by law. For more information, see Federal Acquisition Regulation (FAR) 3.104."
2. Requests for additional information from OITO will be sent/received via reply email(s).
3. Approval or denial of request from OITO will be communicated via reply email.
4. A copy of the approval email must be provided to the contracting officer prior to solicitation.
5. The contracting officer must have a copy of the approval before the solicitation is issued and include it in the contract file.

(d) Non-Traditional IT Hardware

Approval Needed:

Senior IT Leader (listed at https://usepa.sharepoint.com/sites/oei_Community/CIOSAC/Documents/Official%20CIO%20SAC-SIO-IMO%20List.pdf)

“Non-traditional IT” refers to hardware that is not generally considered as IT, but which have computer components that link to an EPA network. Examples include scientific equipment in laboratories, or facilities equipment that allow for remote programming of heating and air conditioning. These elements can introduce risk to the network. Authority to approve procurement is assigned to the Regional or Program Office Senior IT Leader, with the requirement that the equipment be covered under a Security Plan and have an Authority to Operate (ATO) on the network.

Process:

Use the same process as described under IT Hardware, but submit the request to your specific Senior IT Leader.

(e) Electronic Database/Library Subscriptions

Approval Needed:

Senior IT Leader (listed at
https://usepa.sharepoint.com/sites/oei_Community/CIOSAC/Documents/Official%20CIO%20SAC-SIO-IMO%20List.pdf)

Process:

(1) Check with your Senior IT Leader for their preferred process. Ensure that the request does not duplicate services already provided through the EPA Desktop Library:
<http://intranet.epa.gov/desktop/>. Provide a copy of approval to the contracting officer or purchase cardholder as applicable.

(2) The contracting officer or purchase cardholder must include documented approval in the contract or purchase card file.

(f) IT Software - Licenses and Maintenance (No configuration or development required)

Approval Needed:

Office of Information Technology Operations Director or
Office of Information Technology Operations Deputy Director

Process:

1. Send an email request for approval as follows:
 - **To:** FITARA-Review@epa.gov
 - **Subject:** FITARA Request for Approval: [description of software license]
 - **Description:** Provide a description of the needed software and its intended use.
 - **Items:**
 - Provide item title/description for each item.
 - Provide quantity requested for each item.
 - Provide estimated unit price for each item.
 - Provide estimated total price.
 - New or Renewal? (Is this a new license or a renewal/maintenance?)
 - **Strategic Sourcing:** Provide a statement as to whether strategic sourcing vehicles were considered. Identify if a strategic sourcing or other existing EPA contract will be used to acquire the software. Please refer to EPA's Strategic Sourcing Page at <http://oamintra.epa.gov/node/660>.
 - **Does this item require a waiver?** If so, please attach the waiver.
 - **Competition:** Provide a statement whether the software license/maintenance is being limited to a specific brand name item or sole source vendor. If so, provide a brand name justification and/or sole source justification as applicable.
 - **Sustainability:** N/A
 - **Accessibility:** Provide a statement whether the software will be acquired as Section 508 compliant. If not, provide details on the exception to Section 508 accessibility requirements.
 - **Other:** Provide any additional information necessary about the acquisition.
 - **Disclaimer:** Provide the following statement in all requests for approval: "This email may contain source selection information and should only be released within the Government to those who have a bona-fide need to know. Unauthorized release of source selection information is prohibited by law. For more information, see Federal Acquisition Regulation (FAR) 3.104."
2. Requests for additional information from OITO will be sent/received via reply email(s).
3. Approval or denial of request from OITO will be communicated via reply email.
4. A copy of the approval email must be provided to the contracting officer prior to solicitation.
5. The contracting officer must have a copy of the approval before the solicitation is issued and include it in the contract file.

**(g) IT Services - Operations & Maintenance (O&M) on Existing IT Systems
(No configuration or development required)**

Approval Needed:

Chief Information Officer (CIO) for contracts equal to or greater than \$1M per year; may delegate to OEI Primary Deputy Assistant Administrator in the CIO's absence.

Chief Technology Officer (CTO) for contracts less than \$1M per year.

Process:

1. Send an email request for approval as follows:
 - **To:** FITARA-Review@epa.gov
 - **Subject:** FITARA Request for Approval: [description of O&M IT Services]
 - **Description:** Provide the following elements:
 - Describe the O&M services and the system(s) those services will support.
 - Period of performance (e.g., base year plus X option years).
 - Estimated dollar value.
 - Describe the approach to hosting and security.
 - Describe any service level agreement (SLA) requirements, if applicable.
 - Describe the status of the acquisition (e.g., acquisition planning, pre-solicitation, etc.).
 - State all critical acquisition deadlines (attach a milestone plan as necessary).
 - Are there any particular risks and mitigation approaches that you want to call out? If so, please describe.
 - **Work Statement:** Attach a copy of the performance work statement (PWS) or statement of work (SOW).
 - **Estimate:** Attach a copy of the Independent Government Estimate (IGE).
 - **Contract Vehicle Strategy:**
 - Identify the contract vehicle to be used for this procurement.
 - Provide a brief statement concerning the selection of the vehicle.
 - Explain whether EPA strategic sourcing vehicles (<http://oamintra.epa.gov/node/660>) or other government-wide vehicles were considered.
 - **Competition:** Provide a statement whether the O&M services are being limited to a specific sole source vendor. If so, provide a sole source justification as applicable.
 - **Sustainability:** Provide a statement whether the O&M services will be acquired as "green" (e.g., inclusion of FAR and EPA clauses on environmentally preferable practices such as FAR 52.223-2, 52.223-10, 52.223-17, and EPA-H-23-101).
 - **Accessibility:** Provide a statement whether the O&M services will be acquired as Section 508 compliant. Describe any specific PWS/SOW language that will be included related to ensure Section 508 compliant deliverables. If not, provide details on the exception to Section 508 accessibility requirements.
 - **Does this acquisition require an IT waiver?** If so, please attach the waiver.
 - **Other:** Provide any additional necessary information about the acquisition.
 - **Disclaimer:** Provide the following statement in all requests for approval: "This email may contain source selection information and should only be released within the Government

to those who have a bona-fide need to know. Unauthorized release of source selection information is prohibited by law. For more information, see Federal Acquisition Regulation (FAR) 3.104.”

2. Requests for additional information from the CIO or CTO will be sent/received via reply email(s).
3. Approval or denial of request from the CIO or CTO will be communicated via reply email.
4. A copy of the approval email must be provided to the contracting officer prior to solicitation.
5. The contracting officer must have a copy of the approval before the solicitation is issued and include it in the contract file.

(h) IT Services - Software Configuration and/or System Development

Approval Needed:

Chief Information Officer (CIO) for contracts equal to or greater than \$1M per year; may delegate to OEI Primary Deputy Assistant Administrator in the CIO's absence.

Chief Technology Officer (CTO) for contracts less than \$1M per year.

Process:

1. Send an email request for approval as follows:
 - **To:** FITARA-Review@epa.gov
 - **Subject:** FITARA Request for Approval: [description of IT Services]
 - **Description:** Provide the following elements:
 - Describe the business need/program objectives for this acquisition.
 - Describe the IT services and the system(s) those services will support.
 - Describe the scope of the acquisition, e.g., tasks and services to be procured.
 - Describe the price structure of the acquisition (Firm Fixed Price, Time & Materials, Cost Plus, Hybrid, Other).
 - List the estimated dollar value.
 - List the period of performance (e.g., base year plus X option years)
 - State all critical acquisition deadlines (attach a milestone plan as necessary; when do you need to release the procurement package?).
 - Describe the status of the acquisition (select one):
 - Acquisition Planning (RFP package not yet prepared)
 - Pre-RFP release (RFP package prepared)
 - If the scope includes development, will you use Agile development methodologies? Please describe.
 - Describe any development alternatives that were considered for this acquisition, e.g., existing COTS/GOTS, existing government code, simplifying businesses processes to avoid need for custom coding.
 - Describe any planned use of shared services associated with this acquisition.
 - Where is the system currently hosted? Are there plans to change the hosting location?
 - Does the system have an Authorization to Operate (ATO)? If not, what are the milestones to get to an ATO?
 - Describe any service level agreement (SLA) requirements, if applicable.
 - Are there any particular risks and mitigation approaches that you want to call out? If so, please describe.¹
 - Describe how the vendor will work with EPA to comply with e-Discovery requests (e.g., FOIA) or records management requirements.
 - **Work Statement:** Attach a copy of the performance work statement (PWS), statement of work (SOW), or other document detailing the work to be performed.

¹ For example, risks listed in pages 62-63 of the Capital Programming Guide:

https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/a11_current_year/a11_2017/capital_programming_guide.pdf

- **Estimate:** Attach a copy of the Independent Government Estimate (IGE).
 - **Contract Vehicle Strategy:**
 - Identify the contract vehicle to be used for this procurement.
 - Provide a brief statement concerning the selection of the vehicle.
 - Explain whether EPA strategic sourcing vehicles (<http://oamintra.epa.gov/node/660>) or other government-wide vehicles were considered.
 - **Competition:** Provide a statement whether the IT services are being limited to a specific sole source vendor. If so, provide a sole source justification as applicable.
 - **Sustainability:** Provide a statement whether the IT services will be acquired as “green” (e.g., inclusion of FAR and EPA clauses on environmentally preferable practices such as FAR 52.223-2, 52.223-10, 52.223-17, and EPA-H-23-101).
 - **Accessibility:** Provide a statement whether the IT services will be acquired as Section 508 compliant. Describe any specific PWS/SOW language that will be included related to ensure Section 508 compliant deliverables. If not, provide details on the exception to Section 508 accessibility requirements.
 - **Does this acquisition require an IT waiver?** If so, please attach the waiver.
 - **Other:** Provide any additional necessary information about the acquisition.
 - **Disclaimer:** Provide the following statement in all requests for approval: “This email may contain source selection information and should only be released within the Government to those who have a bona-fide need to know. Unauthorized release of source selection information is prohibited by law. For more information, see Federal Acquisition Regulation (FAR) 3.104.”
2. Requests for additional information from the CIO will be sent/received via reply email(s).
 3. Approval or denial of request from the CIO will be communicated via reply email.
 4. A copy of the approval email must be provided to the contracting officer prior to solicitation.
 5. The contracting officer must have a copy of the approval before the solicitation is issued and include it in the contract file.

(i) IT Hosting (procured outside of WCF)

Approval Needed:

Chief Information Officer (CIO); may be delegated to the Deputy CIO, or the Director or Deputy Director of the Office of Information Technology Operations.

Process:

1. Send an email request for approval as follows:
 - **To:** FITARA-Review@epa.gov
 - **Subject:** FITARA Request for Approval: [description of IT Hosting]
 - **Description:** Provide the following elements:
 - Describe the IT hosting and the system(s) those services will support.
 - Describe the business need/program objectives for this acquisition.
 - Describe the scope of the acquisition.
 - Describe any alternatives that were considered for this acquisition.
 - Describe the approach to security (include system categorization if known, and specify if a Trusted Internet Connection (TIC) is required).
 - Describe any service level agreement (SLA) requirements, if applicable.
 - Describe the methodology used to create the Independent Government Cost Estimate (IGCE).
 - Are there any particular risks and mitigation approaches that you want to call out? If so, please describe.
 - Describe the status of the acquisition (e.g., acquisition planning, pre-solicitation, etc.).
 - State all critical acquisition deadlines (attach a milestone plan as necessary; when do you need to release the procurement package?).
 - **Work Statement:** Attach a copy of the performance work statement (PWS) or statement of work (SOW).
 - **Estimate:** Attach a copy of the Independent Government Cost Estimate (IGCE).
 - **Strategic Sourcing:** Provide a statement that strategic sourcing vehicles were considered. Identify if a strategic sourcing or other existing EPA contract will be used to acquire the IT hosting.
 - **Competition:** Provide a statement whether the IT hosting are being limited to a specific sole source vendor. If so, provide a sole source justification as applicable.
 - **Sustainability:** Provide a statement whether the IT hosting will be acquired as “green” (e.g., inclusion of FAR and EPA clauses on environmentally preferable practices such as FAR 52.223-2, 52.223-10, 52.223-17, and EPA-H-23-101).
 - **Accessibility:** Provide a statement whether the IT hosting will be acquired as Section 508 compliant. If not, provide details on the exception to Section 508 accessibility requirements.
 - **Other:** Provide any additional information necessary about the acquisition.
 - **Disclaimer:** Provide the following statement in all requests for approval: “This email may contain source selection information and should only be released within the Government to those who have a bona-fide need to know. Unauthorized release of source selection

information is prohibited by law. For more information, see Federal Acquisition Regulation (FAR) 3.104.”

2. Requests for additional information from the CIO may be sent/received via reply email(s).
3. The Office of Information Technology Operations (OITO) will be the broker for provision of hosting services. All acquisitions requesting hosting external to EPA will be addressed via a panel discussion with the CIO and OITO staff.
4. Approval or denial of request from the CIO will be communicated via reply email.
5. A copy of the approval email must be provided to the contracting officer prior to solicitation.
6. The contracting officer must have a copy of the approval before the solicitation is issued and include it in the contract file.

Subsection 39.1.2 –Cybersecurity Tasks (April 2018)

39.1.2.1 Purpose.

The purpose of this subsection is to finalize Interim Policy Notice 17-01, *Use of 22 Cybersecurity Tasks*.

39.1.2.2 Background.

The Office of Management and Budget (OMB) issued guidance on improving cybersecurity protections in federal procurement. The guidance provides minimum information security requirements for handling sensitive information such as personally identifiable information (PII). Consequently, the Office of Acquisition Management (OAM) and the Office of Environmental Information (OEI) coordinated in the creation of cybersecurity tasks to be used in performance work statements (PWSs) and statements of work (SOWs) as applicable.

39.1.2.3 Authority/Applicability.

(a) Authority.

This subsection is issued in accordance with FAR 1.301(a), and EPA Delegations Manual Chapter 1-2.

(b) Applicability.

This policy applies to any action effected by cybersecurity.

39.1.2.4 Definitions [Reserved].

39.1.2.5 Policy.

OEI, as the Agency's cybersecurity technical expert, is responsible for including any of the cybersecurity tasks as necessary in its SOWs and PWSs.

Contracting Officer's Representatives (CORs) who do not work in OEI should seek assistance from OEI when choosing which if any of the subject cybersecurity tasks must be added or included in the COR's PWS or SOW. A COR may want to include an OEI representative as a cybersecurity consultant on the advanced procurement plan (APP) team for new requirements for information systems.

39.1.2.6 Website.

Limited-use cybersecurity tasks, to be used in performance work statements (PWSs) and statements of work (SOWs), are located on the Office of Environmental Information's [FITARA website](#) under *Cybersecurity and Privacy*.

CHAPTER 42 – CONTRACT ADMINISTRATION AND AUDIT SERVICES

Section 42.3 – Contract Administration Office Functions

Subsection 42.3.1 - Management Integrity in Acquisition Systems (May 2019)

This subsection was previously Section 42.2 of the Contracts Management Manual.

42.3.1.1 Purpose.

This section sets forth the internal control objectives and techniques to be used for evaluating EPA acquisition systems and their performance, and the means by which certification is made to the Agency head that the Agency's acquisition policies and procedures conform to all Federal laws and regulations, that they support the Agency's policies, objectives, and mission, and that they contain the necessary elements to promote efficient and effective acquisition throughout the Agency.

42.3.1.2 Background.

- (a) Sections 1(c), 1(d) and 1(i) of Executive Order 12352, Federal Procurement Reforms, require the heads of agencies to "ensure timely satisfaction of mission needs at reasonable prices by establishing criteria to improve the effectiveness of procurement systems, establish criteria for enhancing effective competition and limiting noncompetitive actions...", and to provide the agency procurement executive with criteria to use to "evaluate system performance in accordance with approved criteria...and certify to the agency head that systems meet approved criteria."
- (b) The Federal Managers' Integrity Act of 1982, P.L. 97-255, signed into law on September 8, 1982, requires that each executive agency establish internal accounting and administrative controls in accordance with standards prescribed by the Comptroller General. The Act also required OMB to establish guidelines by which agencies can evaluate their systems of internal accounting and administrative control. The Act further requires a statement by December 31 of each year from the head of each executive agency to the President and the Congress stating whether or not the Agency's systems of internal control comply with the requirements of the Act.
- (c) The Agency's Organization and Functions Manual authorizes the Office of Acquisition Solutions (OAS) to conduct a contracts management technical review and internal evaluation of all contracting and simplified acquisition operations.

42.3.1.3 Authority/Applicability.

- (a) This section implements acquisition management responsibilities derived from Executive Order 12931, October 17, 1994, on Federal Procurement Reforms and internal control responsibilities derived from the Federal Manager's Financial Integrity Act of 1982, and establishes the OAS Management Integrity Program.
- (b) This section also implements the requirements of EPA Order 1000.24, Management Integrity, and the Office of Acquisition Management and Budget (OMB) Circular A-123, Management

Accountability and Control, dated June 21, 1995. c. Applicability. This directive is applicable to EPA Headquarters acquisition and contracts management organizations, Regional contracting offices, and all EPA field offices/ individuals that have been delegated contracting authority, e.g., On-Scene Coordinators (OSC) and purchase cardholders. The plans outlined in this section will be used in formal internal contract reviews of all organizations' purchase and contract activities, and for certification to the Agency head that the acquisition systems meet standards of acceptability to ensure efficient operations and to prevent fraud, waste, and mismanagement of Government funds.

42.3.1.4 Definitions.

- (a) Procurement system - Includes all functions performed in the process of acquisition, whether manual or automated.
- (b) Internal Control objective - A desired goal or condition for a specific event cycle.
- (c) Internal Control technique - A process or document that is being relied on to efficiently and effectively accomplish a control objective and thus help safeguard an activity from waste, loss, unauthorized use or misappropriation.

42.3.1.5 Policy.

Introduction to Internal Control Objectives

The criteria listed below in sections 42.3.1.5.1 through 42.3.1.5.6 identify the internal control objectives established for evaluating EPA's acquisition systems. These objectives state in broad terms the desired goals and conditions expected for each specific area. Section 42.3.1.5.7 states the internal control techniques that will be employed to evaluate how well the Agency's procurement systems meet the stated internal control objectives and Section 42.3.1.5.8 discuss how corrective actions will be implemented.

42.3.1.5.1 Management of the Acquisition System

The Agency shall be compliant with statutory and regulatory requirements and shall effectively fulfill the program needs of the Agency.

- (a) Management- Ensures that goods and services are acquired with reasonable prices, timely delivery, and required quality.
- (b) Organization- Optimize the location and structure of the acquisition management organization to maximize mission support.
- (c) Staffing-Ensures employees are properly trained and qualified and that all applicable continuous education initiatives are fulfilled as specified in the Agency's acquisition staffing and career development plan.
- (d) Information Management- Maximize the use of information technology to facilitate the operations, management, tracking, reporting, and evaluation of information in all phases of the acquisition process.
- (e) Quality Control- Effectively monitors, evaluates, documents, and improves the quality of the acquisition system's performance.
- (f) Implementation of Socio-Economic Policies- Ensures that socio-economic policies are carried out in accordance with the intent of the Congress and direction from the president.
- (g) Policy and Procedural Guidance- Provides effective policy and procedural guidance to those involved in the acquisition process.
- (h) Performance Measurement- Effectively identifies, publishes, and monitors performance measurement goals for individual acquisition events.
- (i) Customer Service Evaluation- Actively assesses customer service satisfaction and considers customer service concerns in decision making.
- (j) External Inquiry Process- Effectively responds to external requests for information via the Freedom of Information Act and Other statutes

42.3.1.5.2 Planning the Acquisition Process

- (a) Defining Acquisition Requirements- System for defining acquisition requirements is simplified and streamlined as much as possible and readily embraces applicable Federal and Agency acquisition initiatives.
- (b) Planning Acquisition Actions- Effectively and accurately plan acquisition actions taking all relevant factors into consideration with program and acquisition managers participating in the process

42.3.1.5.3 The Solicitation Process

- (a) Solicitation Instruments- Solicitation instruments are clear, complete, accurate, and provide the proper basis for evaluation and selection.
- (b) Cost or Price Analysis- Ensure access to effective support and tools to perform cost or price analysis to determine the reasonableness and fairness of price to be paid.
- (c) Negotiations- Carry out negotiations in accordance with regulations and policies, to provide fair and equitable treatment to contractors, and reflect use of good business judgement.
- (d) Contract Awards- Ensure awards are made timely in compliance with applicable statutes, regulations and policies, and that they follow accepted business practices.
- (e) Protests- Response to protests are conducted fairly, timely, and in accordance with regulations and procedures.

42.3.1.5.4 The Post Award Acquisition Process

- (a) Contract Management- Ensure that contracts are properly administered and managed and consider innovation and streamlining whenever possible.
- (b) Contractor Performance- Ensure contractors perform in accordance with all terms and conditions of the contract.
- (c) Contract Work Ordering Issuance- Ensure work performed under contracts is within the scope of those contracts and complies with Federal and Agency regulations.
- (d) Contractor Systems- Ensure that contractors' administrative and financial systems provide maximum protection to the government while conforming with public law, the contract, and efficient and effective business practices.
- (e) Contract Modification and Change Orders- Ensure acquisition system provides for the proper use, control, documentation, pricing, negotiation, and award of contract modifications and change orders in accordance with Federal and Agency regulations and procedures.
- (f) Contract Payment- Ensure the method of payment is appropriate, that payment is correct and prompt, and that security interest arising as a result of payment are protected.
- (g) Contract Close-out Termination Procedures- Ensure that contract closeout and termination procedures assure timely release of funds, prompt settlement of partial and complete terminations, prompt closeout of contracts, and retirement of official files.

42.3.1.5.5 Simplified Acquisitions

- (a) Management- Provide the necessary facilities, staffing, training, policies, and procedures for

performing simplified acquisitions in an effective manner.

(b) Procedures- Effectively uses automated procedures which minimize administrative and purchase costs and improves the opportunities for small business concerns to obtain a fair proportion of Agency business.

(c) Administrative Functions- Effectively administers and monitors the simplified acquisition function to assure it is performed in accordance with Federal and Agency regulations and procedures.

42.3.1.5.6 Purchase Card

(a) Policies and Guidance- Issue and maintain effective policies and guidance for using purchase cards.

(b) Training- Provide the necessary facilities, staffing, and training for purchase card users and approving officials.

(c) Management- Properly control the issuance of purchase card authority, oversees purchases being made, and ensures compliance with Federal and Agency guidance.

42.3.1.5.7 Internal Control Techniques

The following are the internal control techniques that will be used by OAS to verify that the objectives listed above are accomplished, thus helping to safeguard against waste, loss, unauthorized use, or misappropriation:

(a) Federal and Agency acquisition regulations, policies, procedures, and guidance. The EPA Acquisition Guide (EPAAG) is a document issued by OAS in which management of the specific requirements, milestones, and detailed performance objectives for the office are identified. Other specific requirements are identified through a variety of other means by OAS. All of these documents serve as the basis by which the objectives described above are evaluated.

(b) Management knowledge gained from the daily operation of OAS and each of its subcomponents.

(c) Contract Management Assessment Program (CMAP) conducted for the purpose of assessing adherence to Federal and Agency regulations and procedures and the effectiveness of management controls.

(d) Semi-annual performance reports.

(e) Office of Inspector General and General Accounting Office reports, including audits, inspections, reviews, and investigations.

(f) Special reviews conducted on an ad-hoc basis, including peer reviews.

(g) Analysis of feedback received from customers.

(h) The recommendation of senior management obtained during discussions concerning EPA's material and Agency weaknesses.

42.3.1.5.8 Implementing Corrective Action

- (a) OAS is committed to continuous improvement. Therefore, the management controls and management techniques outlined above will be periodically reviewed and updated as changes occur in the Federal acquisition arena and as their effectiveness is measured.
- (b) OAS is committed to implementing corrective actions as weaknesses and improvements are identified. Once corrective actions are identified, appropriate time frames will be established and monitored to ensure proper implementation.
- (c) OAS assures the proper implementation of corrective actions by using the internal control techniques outlined in Section 42.3.1.5.7.

Subsection 42.3.2 - Contract Management Reporting Requirements (July 2019)

42.3.2.1 Purpose.

The purpose of this subsection is to identify reporting requirements to ensure that proper contract administration is being performed on EPA contracts.

42.3.2.2 Background [Reserved].

42.3.2.3 Authority/Applicability [Reserved].

42.3.2.4 Definitions [Reserved].

42.3.2.5 Policy.

Activities Subject to Reporting Requirements. The following activities are subject to reporting requirements. (All dollar figures referenced represent the total potential value of the contract including options) Activities which issue reports are responsible for tracking responses and updates to responses.

42.3.2.5.1 Planning and Cost Support

Contractor Purchasing Systems Reviews. The Financial Analysis and Oversight Branch (FAOB) is responsible for seeing that these reviews are performed no less than every three years for contractors meeting the threshold in FAR 44.302(a). The Branch shall conduct the reviews in accordance with FAR Subpart 44.3 and the guide developed by the Branch.

Financial Monitoring. This could be done on contracts of \$5M and over including base and all options.

42.3.2.5.2 Acquisition Policy and Training Branch (APTB)

Federal Managers Financial Integrity Act (FMFIA) Reviews. This Act requires the Agency to report annually to the President and Congress on whether the Agency's systems of internal accounting and administrative controls comply with the requirements of the Act. The Director or delegate of OAS, will establish the schedule for procurement system reviews to ensure compliance with internal control objectives. The review will include a representative sample of contracting officer administration of contracts of \$1M or less.

Contract Management Assessment Program (CMAP). APTB will review the activities of contracting officers and project officers on management of contracts over \$1 million. The purpose of these reviews is to ensure that EPA receives quality contract services and products, on time, and at reasonable costs or prices. The reviews will concentrate on activities related to the

contract administration areas listed in Appendix 42.3.2-A.

Contracting Officer Training. EPAAG Chapter 1 established the Contracting Officer Warrant program. The section outlines minimum experience and training requirements for specific levels of contracting officer authority.

The Federal Acquisition Institute Training Application System (FAITAS). Tracks acquisition courses provided by the Office of Acquisition Solutions and courses enrolled in FAITAS. The system also tracks contracting officer warrants (above micro-purchase level) throughout the Agency.

42.3.2.5.3 Chiefs of Contracting Offices

Financial Monitoring. (Contracts of \$1M to \$5M). The chiefs of the Contracting Offices are responsible for the financial analysis of contracts between \$1M and \$5M, which are administered from their respective offices. Analyses shall be performed on a quarterly basis and be modeled on the analysis performed for paragraph section 42.3.2.5.2 above.

Reporting Requirements. The matrix in Appendix 42.3.2-B lists all of the functions subject to reporting. The matrix lists the responsible group for each report, the due date, and follow-up responsibilities. Appendix 42.3.2-C contains the format for the Plan of Action and Milestone (POAM) report.

APPENDIX 42.3.2-A
CONTRACT ADMINISTRATION AREAS OF REVIEW

(a) Cost Monitoring

- (1) Financial reports/vouchers
- (2) Independent logs
- (3) Overruns/underruns
- (4) ODC and travel ceilings
- (5) Labor mix/average hourly rate

(b) Technical Performance Monitoring

- (1) Technical reports
- (2) Acceptability
- (3) Timeliness
- (4) Deliverables

(c) Property Administration

- (1) Approvals
- (2) Documentation

(d) Subcontracts/Consultants

- (1) Copy of agreement
- (2) Summary of prime/sub negotiations
- (3) Competition/sole source
- (4) Cost/price reasonableness
- (5) Approvals
- (6) Reports

(e) Issuance of Task Order, Delivery Orders, Other Directives

- (1) Timeliness
- (2) Within scope
- (3) Work Plan approvals
- (4) Limits exceeded
- (5) Amendments
- (6) Issued by authorized person

(f) Modifications

- (1) Change orders
- (2) Options
- (3) Administrative modifications
- (4) New scope
- (5) Key personnel
- (6) Documentation

(g) Disputes, Claims, Terminations

- (1) Disputes
- (2) Claims
- (3) Terminations

(h) Other

- (1) Organizational conflicts of interest
- (2) Improper business practices
- (3) Security of confidential business
- (4) Follow-up/resolution of audits, other post-award reviews
- (5) Project Officer workload limitations
- (6) Project Officer performance standards

APPENDIX 42.3.2-B CONTRACT MANAGEMENT REPORTING MATRIX

Function: Financial and Cost Service Centers	Type of Initial Output	Initial Report Issuance	Follow-Up Requirement	Responsible Group for Follow- Up	Follow-up Report Issuance
A. Contractor Purchasing System Review (CPSR)	Report with Findings/ Recommendations	No less than every 3 years	POA&M* to resolve issues	FAOSC	As required
Financial Monitoring update to (\$5M and Over) Cost	Report from Operations Cost Advisory Group	No less than quarterly on each Contract	POA&M* to resolve issues	Operations managers input from CO	As required

*POA&M - Plan of Action and Milestones to resolve findings/implement recommendations to improve particular aspects of contract management, to be submitted to the Head of the Contracting Agency (HCA) as specified in initial report in the format in Appendix 42.3.2-C. Updates on unresolved issues to be submitted to report initiator and due as specified above.

Function: Training and Oversight Service Centers	Type of Initial Output	Initial Report Issuance	Follow-Up Requirement	Responsible Group for Follow-Up	Follow-up Report Issuance
CO/PO Contract to Monitoring Program of staff Contracts over \$1M	Report with Findings/ Recommendations	Active contracts over \$1M	POA&M to resolve issues	Operations Managers input from CO	Quarterly update APTB
FMFIA Reviews Policy	Report with Findings/ Recommendations	For each contracting and APTB	POA&M to resolve activity, once a year	Operations Managers issues	As required by input from CO
Training (CO)	Automated update on individual requirements/needs	Semiannually	Schedule needed courses	Operations Managers input from CO	None
Training (PO/DO/TM) PO Cert. Program Cont. Mgmt. Courses	Automated update on certified personnel/ program reqts.	Quarterly to OAS and COs	COs verify only certified program staff administer contracts	Contracting Officers; input from program office coordinators	None

Function: Chiefs of Contracting Offices	Type of Initial Output	Initial Report Issuance	Follow-Up Requirement	Responsible Group for Follow- Up	Follow-up Report Issuance
C. Financial Monitoring (\$1M to \$5M)	Report from CO	No less than quarterly on each contract	POA&M to resolve issues	Operations Managers input from COs	Quarterly to operations

APPENDIX 42.3.2-C POAM FORMAT

Finding/Recommendation	Action Required to Implement Recommendation	Planned Implementation Date	Actual Implementation Date
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Subsection 42.3.3 – Agency Shutdowns and Closures (November 2018)

42.3.3.1 Purpose.

This subsection provides guidance for managing contracts during and after the shutdown or closure of EPA facilities. It replaces Section 42.4 of the Contracts Management Manual, Interim Policy Notice 13-01, and Clause EPA-H-42-103, Temporary Closure of EPA Facilities posted on May 6, 2013 in their entirety.

42.3.3.2 Background.

The Agency may be shutdown or closed for (1) appropriation hiatuses (i.e., the absence of an appropriation bill or a continuing resolution passed by Congress and signed by the President), (2) weather conditions or natural disasters, or (3) other factors such as Executive Orders, building hazards, or public safety matters.

42.3.3.3 Authority/Applicability.

If the Agency is faced with an appropriation hiatus, this section applies to all contract actions when there is insufficient carryover funding to continue operations as determined by senior Agency managers and contract actions funded from annual appropriations. For additional information, see [EPA Order 1000.26A, EPA Contingency Plan for the Shutdown of the Agency due to a Funding Hiatus](#).

42.3.3.4. Definitions.

(a) Hiatus Funding – That period of time during which appropriations are not available and only shutdown or excepted activities can be carried out.

(1) Non-Open-ended appropriation hiatus – The duration of the hiatus is known in advance.

(2) Open-ended appropriation hiatus – The duration of the hiatus is unknown.

(b) Shutdown Personnel - Those individuals designated by an Agency office to continue to work for up to five and one-half days to facilitate the orderly shutdown of the Agency during an Agency shutdown. Once the services of these employees are no longer required, they will be furloughed.

(c) Excepted Personnel - Those individuals designated by the Agency to perform excepted activities, such as the protection of life and property. Therefore, excepted personnel will continue to report following a shutdown of the Agency and in the absence of an appropriation, unless notified otherwise.

(d) Shutdown and Excepted Activities - The Office of Management and Budget (OMB) has indicated that in the event of a shutdown for an appropriation hiatus, agencies may only perform certain activities: (1) shutdown activities (i.e., those necessary for the orderly shutdown of non-excepted

activities of the Agency) and (2) excepted activities (i.e., those necessary to ensure against an imminent threat to public health and safety, or the protection of property). **Under the authority of the Anti-Deficiency Act, Contracting Officers (COs) and Purchase Card holders may obligate the Government for shutdown and excepted activities even in the absence of an appropriation.** However, contractors cannot be paid for these activities until an appropriation or continuing resolution has been enacted.

The Office of Acquisition Management (OAM) will identify as either shutdown or excepted personnel specific COs, who will manage contracts for shutdown and excepted activities during the shutdown. Regional COs will identify specific COs as shutdown or excepted personnel in accordance with direction provided by their Senior Resource Officials (SROs).

- (e) Funded Activities – Activities under a fully funded contract which does not require Agency interaction. Work will immediately stop when all obligated funds are expended, or there is a need for federal interaction.
- (f) Non-Shutdown and Non-Excepted Personnel - Those individuals not performing shutdown or excepted activities and who will be dismissed no later than 12:00 p.m. on the first workday of a fiscal year absent an appropriation or a continuing resolution.
- (g) Inventory of Excepted Activities - The Director of OAM will request the submission of an inventory of contracts from the SROs which cite excepted activities, as well as fully funded contracts for continued performance when the Agency is faced with an appropriation hiatus. In addition to identifying the excepted activities, the SROs should provide associated rationale in sufficient detail to make it clear why the activities are necessary to protect against an imminent threat to public health and safety, or the protection of property. The inventory will be requested and submission required with as much advance notice as is possible.

Examples of excepted activities relevant to the Agency cited in the OMB guidance include, but are not limited to the following:

- Activities essential to ensure against an imminent threat to public health and safety, including safe usage of food, drugs, and hazardous materials;
- Protection of Federal lands, buildings, waterways, equipment and other property owned by the Government;
- Law enforcement and criminal investigation;
- Emergency and disaster assistance;
- Activities necessary to maintain protection of research property, including data.

An example EPA has determined to be within the OMB guidelines as shutdown activities include:

- Payroll support, such as for data entry for the last pay period covered by an appropriation.

Examples EPA has determined to be within the OMB guidelines as excepted activities include:

- Security guard services;
- Care and feeding of laboratory animals;
- Maintenance of computers necessary to prevent failure or loss of data.

Note: A brief delay in performing routine maintenance of Government property does not constitute an "emergency" for the purposes of identifying excepted activities. Failure to properly maintain Government property may "compromise to some degree" the safety of human life or the protection of property, but is not considered an imminent emergency. Therefore, performing routine maintenance would not be considered an excepted activity.

42.3.3.5 Policy for Agency Shutdowns or Closures Due to Appropriation Hiatuses

The two (2) types of appropriation hiatus during an agency shutdown are open-ended (duration unknown), or non-open-ended (advance notice).

42.3.3.5.1 Shutdowns for Appropriation Hiatuses

When the Agency is shutdown for an appropriation hiatus, COs will need to notify contractors as part of the shutdown activities to stop-work on other than excepted activities on existing contracts. Additionally, COs may issue new work, such as delivery orders, as well as exercise options for excepted activities listed in the inventory of excepted activities.

- (a) On-Site Contractors. COs must issue stop-work orders to contractors performing any work in Government facilities if the work has not been determined to be an excepted activity. The stop-work order should be structured to allow performance of excepted activities, if such activities are part of the statement of work. COs will instruct contractors to immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered in the stop-work order during the period of work stoppage. Appendix 42.3.3-A1 and A2 provides samples of stop-work orders.
- (b) Off-Site Contractors. Off-site contractors may continue to perform excepted activities. Although contractors may legally continue to perform non-excepted activities under existing contracts for which the work has been fully funded, Senior Agency Managers may determine that the inability of the Agency to monitor contractor performance necessitates discontinuance of these activities. If this decision is made, COs must issue stop-work orders for non-excepted activities.

If the fully funded activities are allowed to continue, the CO shall provide a notice to the contractor that the activities may continue to be performed during the funding hiatus

(Appendix 42.3.3-B provides a sample notice) and the contact information of OAM's excepted personnel. In the event the contractor needs interaction with OAM's excepted personnel, the excepted personnel shall immediately issue a stop-work notice.

- (c) Cancellation of Stop-Work Orders. Once the appropriation hiatus is over, and an appropriation or continuing resolution has been passed by Congress and signed by the President, and after written notification has been received from program officials, COs must issue cancellations of stop-work orders. Appendix 42.3.3-C provides a sample of a cancellation of a stop-work order.

42.3.3.5.2 Procedures for Shutdowns for Appropriation Hiatuses

The lists of excepted and fully funded activities will be distributed as soon as practicable to the OAM Division Directors and the Regional Acquisition Managers, who will distribute them to the appropriate COs.

The COs will review the activities on the list and associated rationale prior to preparation of any stop-work orders for non-excepted activities. Activities which **do not** appear to comply with the established OMB and Agency guidelines should be discussed with the program office.

In accordance with FAR 42.1303(b), stop-work orders must be approved at one level above the CO prior to issuance. The list of excepted activities will be part of the file documentation **reviewed** and approved by the level above the CO prior to the CO's issuance of the stop-work order.

In order to ensure that contractors are not refused access to EPA facilities when they are needed to perform excepted activities, COs will notify the contractor, via email or verbally of the excepted activities to be performed prior to the issuance of the stop-work order. Stop-work orders transmitted, to contractors who are to perform excepted activities, will instruct them to provide to the COs, within 24 hours of receipt of the stop-work orders, the names of individuals who will be performing any excepted activities on-site. The CO should then, within 24 hours of receipt of the list of individuals performing excepted activities, provide this list to the facilities manager responsible for security for the location. Individuals whose names are not on the list will not be granted access to the EPA facilities.

The contract document (e.g., option, modification, delivery order, contract) tasking the contractor with performance of excepted activities should clearly indicate the action is being taken "subject to the Anti-Deficiency Act exception for emergencies involving the safety of human life, or the protection of property, where the threat can be reasonably said to be near at hand and demanding of immediate response (excepted activities)."

Government personnel responsible for receiving delivery or performing inspections may not be available during the period of the funding gap. Accordingly, contractors will be directed to suspend any attempts to deliver until they are notified otherwise by the CO. The Government will not be liable for any costs incurred if delivery is attempted during the period of the funding hiatus. See Appendix 42.3.3-D Sample Delayed Delivery Notification.

42.3.3.5.3 Settlement of Requests for Equitable Adjustment for Stop-Work Orders

- (a) General. Before settling any claim or request for an equitable adjustment, the CO must ascertain the rationale for the dollar amount or any other adjustments requested, and have adequate supporting data to determine that the request accurately reflects a reasonable adjustment to the contract. COs will need to be familiar with the contracts terms and conditions; the contractor's internal employee policies for vacation, leave, and time and attendance; and the contractor's disclosure statement, if applicable.
- (b) Certification of Claims. A claim is a written demand or assertion, seeking as a matter of right, the payment of money in a sum certain, which is submitted to the CO for decision (i.e., either explicitly or implicitly requesting a final decision). Consequently, a request for an equitable adjustment that meets these criteria is also a claim, even if it is not disputed. FAR 33.207 require that all claims in excess of \$100,000 **must** be certified by a person duly authorized to bind the contractor in accordance with the Contracts Disputes Act (CDA).

Note: A request for an equitable adjustment (REA) may not require processing as a claim, in accordance with the CDA time frames unless:

- negotiations for settlement of the requests for equitable adjustment breaks down;
- the resolution of the request for equitable adjustment is in dispute;
- the contractor requests a COs final decision;
- the request for equitable adjustment is certified per FAR 33.207; and
- all three elements of a claim exist (i.e., 1) a written demand or assertion, seeking as a matter of right, 2) the payment of money in a sum certain, which is 3) submitted to the CO for decision).

42.3.3.5.4 Procedures for Requests for Equitable Adjustment for Stop-Work Orders

- (a) General. When the Agency has multiple contracts with the same contractor, COs shall coordinate their positions for settlement to ensure consistency in responses.

A Request for Equitable Adjustments (REAs) for either or both in the delivery schedule or contract price may be made by the contractor. All requests should be made in accordance with FAR 52.242-15(b)(2), in accordance with the terms and conditions of the contract.

To facilitate this interaction, COs will submit copies of all REAs received to the Financial Analysis and Oversight Service Center (FAOSC) who will compile a log of REAs received. The log will be placed on the FAOSC's Intranet page and updated on a regular basis. The log will allow COs with multiple contracts with the same vendors to coordinate their positions to ensure consistency in settlement of claims. COs are expected to access this data on a regular basis.

As deemed appropriate, COs may request the assistance of FAOSC to evaluate portions or all the costs contained in a REA to determine compliance with FAR, 48 CFR, contract provisions, the guidance contained within this document and other appropriate Agency and Federal Regulations.

The Office of General Counsel (OGC) should be consulted on any legal issues arising out of processing a REA.

- (b) Cost Minimization. COs should review any claims to ensure that contractors exercised due diligence in minimizing the incurrence of any costs during shutdown and start-up.
- (c) Claims for Reimbursement of Shutdown Costs. The contractor may assert its right to the adjustment within 30 days after the end of the period of work stoppage provided, that, if the CO decides the facts justify the action, the CO may receive and act upon the claim submitted at any time before final payment under this contract (FAR 52.242-15(b)(2)). The COs will be allowed 14 days to perform a cursory review (contract requirements) to determine if the facts justify the contractor's submission of a REA.

The costs to be reimbursed will be determined after COs have negotiated any equitable adjustments and issued any required modifications. COs shall instruct the contractor to submit separate invoice(s) identifying costs associated with the shutdown.

Note: FAR 52.242-15 (b)(2) states if a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the CO shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing accordingly. In addition, PTOD strongly encourages the COs to seek a **NO** cost extension over contract price adjustments.

COs are encouraged to communicate with the contractors to mitigate costs to the greatest extent possible. Allowing employees to work on other projects, take training and or vacation (leave) are potential ways to mitigate costs.

- (d) Previously Invoiced Costs. COs are required to verify with contractors whether any costs associated with complying with the stop-work order have been already invoiced and/or reimbursed. COs will review the contractors' invoices and progress reports to identify any such costs.

If any costs have been included in prior invoices, COs should require the contractor to identify these costs separately in any supporting documentation for REAs. This will avoid the inclusion of costs in any subsequent settlement modification that have already been invoiced and reimbursed (i.e., avoid duplicate payments of these costs). COs should ensure that reimbursed amounts are allocable, allowable, and reasonable in accordance with FAR 31.2.

- (e) Time Extensions. When COs evaluate requests for time extensions, they must determine whether the request is needed as a result of the stop-work order(s), to avoid providing extensions for delinquencies that were within the control of the contractor. Extensions for expiring contracts, and delivery orders that are needed to complete required work delayed due to the stop-work order, would be made under the authority of the contract's Stop-work Order or Suspension of Work clauses. A Justification for Other than Full and Open Competition would not be required in such a case.

(f) Price Adjustments. The COs shall review REAs and make price adjustments when appropriate. COs should utilize FAOSC's Advisory REA Reports, and other pricing information and data from program offices, if applicable, to develop the basis for price adjustments. See FAR 33.211 for further guidance.

(g) Indirect Cost Rates. Prior to increasing indirect cost rates and other contractual ceilings, COs should evaluate the impact of the stop-work order against any off-setting reductions. Such reductions would include new contract awards anticipated or received, and cost-saving measures available to the contractor. COs should also be aware of other reasons, such as inefficiencies on the contractors' part, that would cause the indirect cost rate(s) to increase.

COs are cautioned to review supporting documentation carefully prior to making any adjustments. COs should notify contractors that they plan to refer any indirect cost rate adjustments to the FAOSC for resolution as part of their normal procedures for calendar year submissions.

For those contracts that are not subject to this process, such as contracts with fixed rates, COs may wish to consult with the FAOSC or other Agency cost analysts for assistance in reviewing this data.

(h) Treatment of Individual Costs. The following general guidance is provided for certain categories of costs. Once a CO has determined that a cost is allowable, allocable, and reasonable (including using appropriate costing data and reports, i.e. timesheets, employee rosters, etc.) and should be included as part of a reasonable adjustment to the contract, the CO must refer to the contract's terms and conditions, the contractor's internal employee policies, and the contractor's disclosure statement to determine whether the cost can be reimbursed as a direct or indirect cost.

(1) Costs that **could** be considered allowable (some as direct costs, others as only indirect costs) include, but are not limited to, the following:

- Costs associated with securing the facility.
- Costs resulting from redirecting contractor's employees not otherwise directly billable to an EPA or other Federal contract.
- Costs resulting from placing contractor's employees on vacation or other leave status.
- Costs resulting from placing contractor's employees on layoff status and incurring unemployment expenses.
- Costs associated with protecting against damage to Government property, including computer databases, Government-furnished equipment, security, and research assets. The protection must be against an imminent threat, and not be considered routine maintenance.

- Costs for on-going fixed infrastructure costs, such as utilities, telephones, rent, etc. However, those costs that would be incurred based on usage should have been stopped, such as cellular telephones. Unless used to perform shutdown or excepted activities, such costs should not have been incurred and, therefore, should not be reimbursable.
- Costs resulting from idle equipment used exclusively on the EPA project that cannot be used elsewhere, and for which costs cannot be mitigated, such as where continued rental is more appropriate and cost effective than return and re-rental.

For other than cost-reimbursable contracts, indirect costs derived using the Eichleay formula to recover fixed overhead costs resulting from damages to contractors for idle labor that could not otherwise be reassigned to EPA or another contract (See Appendix 42.3.3-E for a further discussion of the Eichleay formula.)

COs adjusting contract prices for unabsorbed fixed overhead costs should instruct the contractor to credit appropriate pools for the adjustment and notify the cognizant financial administrative CO, other COs with contracts with the contractor, and contract auditors so that the credit can be verified.

[Under cost-reimbursable contracts, indirect costs that would have been associated with direct labor costs that were anticipated, but not incurred, will generally be absorbed by appropriate adjustment of indirect cost rates to reflect the allocation base (the reduced labor dollar volume across which the indirect pools are spread). Thus, there being no loss, application of the Eichleay formula to a term form or completion form cost-reimbursement contract is unwarranted.]

(2) Costs that would **normally** not be considered allowable as a direct cost under the contract include, but are not limited to, the following:

- Costs for conversion of contractor employee vacation or other leave time to direct labor.
- Costs of direct labor based on company requirements to pay in full Federal Labor Standards Act (FLSA) exempt personnel (those employees who are not reimbursed on an hourly or less than full-time basis) who could not otherwise be reassigned as a direct charge.

In accordance with 29 CFR 541.118(a), 541.212(a), and 541.312(a), in order for employees to retain their status as FLSA-exempt, the FLSA requires employers to pay FLSA-exempt personnel their full salary for any week in which they perform any work, without regard to the number of days or hours worked. Additionally, the FLSA states that the employer need not pay exempt personnel for any work week in which they perform no work. Exempt personnel are not reimbursed on an hourly basis, nor do they have an adjustment in their pay made for time-off from assigned work.

If a stop-work order was issued during a week in which some work had already been performed by a contractor's FLSA exempt employees, contractors are required to pay these employees their full salary for the week. If the contractor cannot reassign these FLSA-exempt employees to other cost objectives, the contractor may need to pay these employees for idle time. Reimbursement to contractors for charges to EPA for such costs should be made in accordance with the terms of the contract, the FAR, and the contractor's accounting system. Such idle time is typically reimbursed through the contractor's indirect cost rates.

- Costs of direct labor for idle time of employees who were not reassigned, simply because there was no alternative work at their physical location. Contractors should use their best business judgment to minimize expenses. If temporary reassignment was impossible, direct labor costs may not normally be paid. Any decision to reimburse contractors that do not perform labor, i.e., idle time as a direct charge must be approved by the Senior Procurement Executive (SPE) or designee.
- Costs of maintaining idle equipment for which the contractor has taken no steps to minimize costs.
- Direct labor for training, even if EPA-specific training.
- Direct labor for performance of maintenance and improvements to the contractor's facility, even if EPA-specific.
- Costs of direct labor as "lost income." If the Government has no requirement that the lost time be made up, the contractor may not realize the loss in the future as either straight time or overtime.

42.3.3.6 Policy for Agency Closures for Other than Appropriate Hiatuses

When the Agency or any part thereof is closed as a result of factors such as weather conditions, natural disasters, Executive Orders, building hazards, or public safety matters, COs will not need to stop-work on contracts, but will need to advise contractors regarding payment of labor charges.

- (a) On-site contractors. Generally, for contract performance at Government facilities, the Agency will not reimburse contractors for labor costs as a direct charge during the closure if the contractor does

not perform. If contract services can and are performed at a different location, contractors may be reimbursed for direct labor as direct charges. Contractors should be instructed that they will not **normally** be reimbursed as a direct charge for labor costs for on-site employees who were unable to perform any work as a result of the closure. These costs must be accounted for in accordance with any corporate policies they may have (e.g., temporary reassignment to other projects, administrative or other leave).

- (b) Off-site contractors. Contractors working off-site of Government facilities will perform labor under their contracts in the same manner as any other work day. Closure of EPA facilities will not impact off-site performance charges to contracts. If contractors elect to close at their own discretion and do not perform, they may not charge the cost of labor for employees under Agency contracts as a direct charge.

**APPENDIX 42.3.3-A1
SAMPLE STOP-WORK ORDER, Excepted Activities**

Date

Contractor's Point of Contact

Title

Contractor Name

Contractor Address

RE: Contract Number: (insert contract number), Performance During Funding Hiatus

Dear Contractor's Point of Contact:

In accordance with **Section F.1 of the subject contract, FAR Clause 52.242-15, STOPWORK ORDER ALTERNATE I, (or other appropriate contract reference)**, I am issuing the following stop-work order which will be effective **(CO to insert the date of the first day that the Environmental Protection Agency is without an appropriation bill or continuing resolution for fiscal year (i.e., the stop-time, local time, day, and date). Name of contractor** is hereby directed to stop-work in its entirety until notified otherwise, but in no event longer than 90 calendar days **(or other appropriate contract reference for the Government's unilateral stop-work authority)** on the following:

All work associated with this contract except the following excepted activities: (None, or itemize by delivery order or task, with narrative description of the specific work exempted from the work stoppage. This will be completed by the CO based on whether there are excepted activities to be performed.)

If the excepted activities are performed at an EPA facility, **name of contractor** shall provide me, **name of CO**, within 24 hours of receipt of this letter, with a list of the names of contractor employees who will be performing this work on-site and will require access to the EPA facility. Individuals whose names are not on the list will not be granted access to the EPA facility.

Name of contractor, therefore, shall immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered herein during the period of work stoppage.

Within a period of 90 days or any extension to this period for which we have agreed, the Government shall either:

A) Cancel the stop-work order; or

B) Terminate the work covered as provided in the termination clause of this contract.

If EPA should cancel the stop-work order or the period of the order or any extension thereof expires, **name of contractor** shall resume work.

If you have any questions regarding this stop-work order, please contact me at **CO's telephone number**.

Sincerely,

CO's name
Contracting Officer

APPENDIX 42.3.3-A2
SAMPLE STOP-WORK ORDER, Non-Excepted Activities

Date

Contractor's Point of Contact

Title

Contractor Name

Contractor Address

RE: Contract Number: **(insert contract number)**, **Performance During Funding Hiatus**

Dear **Contractor's Point of Contact**:

(AGENCY) appropriations expired on **[Insert Date]**. As of **[Insert Date]**, there are no annual appropriations for Federal Agencies, including (AGENCY).

Consequently, the subject contract is subject to the availability of funds. The only basis to allow the contract to continue would be to prevent imminent harm to life or property, or otherwise meet the standard for “excepted” activities. We have assessed the subject contract and determined it is not for the performance of an excepted activity. Therefore, no work is to be performed under the contract after midnight, **[Insert Date]**. You are instructed to refrain from issuing further orders for materials or services related to the portion of the subject contract, to direct any subcontractors to comply with the contents of this letter, and to otherwise minimize costs.

Sincerely,

CO's name

Contracting Officer

APPENDIX 42.3.3-B
SAMPLE Contractor Notification for Funded Activities

Date

Contractor's Point of Contact

Title

Contractor Name

Contractor Address

RE: Contract Number: **(insert contract number)**, **Performance During Funding Hiatus**

Dear **Contractor's Point of Contact**:

This letter serves as notification that the provided appropriations under which the Environmental Protection Agency (EPA) has been operating has expired effective **[Insert Date]**. Effective **[Insert Date]** there are no longer appropriations supporting EPA. As a result, the EPA will shutdown most activities with limited exceptions.

It is determined that the subject contract includes activities that are fully funded, performed off-site, and does not require interaction with Agency officials. Therefore, you may continue contract performance. If **[Insert Contractor's name]** requires interaction with an Agency official, **[Insert Contractor's name]** shall contact OAM's excepted personnel. OAM's excepted personnel will immediately upon contact issue a stop-work order. OAM's excepted personnel is *(Insert name and contact information.)*

[Insert Contractor's name] bears all burden to monitor the contract funding to ensure there is adequate funding for the activities performed during the appropriation hiatus, if **[Insert Contractor's name]** opts not to comply with monitoring the contract funding, please notify me, and the stop-work order is effective immediately.

The direction in this letter is in effect until an appropriation authorizing EPA to operate is signed by the President at which time this direction is rescinded.

Sincerely,

CO's Name

Contracting Officer

CC: *COR name*

RTP-Finance or Cinc

**APPENDIX 42.3.3-C
SAMPLE CANCELLATION OF STOP-WORK ORDER**

Date

Contractor's Point of Contact

Title

Contractor Name

Contractor Address

RE: Contract Number: **(insert contract number)**, Performance During Funding Hiatus

Dear **Contractor's Point of Contact**:

In accordance with **F.1, FAR Clause 52.212-13, STOP-WORK ORDER ALTERNATE I, (or other appropriate contract reference)** under Contract Number **(insert contract number)**, I am canceling the stop-work order which was effective **(insert effective date in stop-work letter)**. **Name of Contractor** is hereby directed to resume work in its entirety as of **(insert effective date for resumption of work)**.

Under the terms of the "Stop-work" clause of your contract, your organization may assert its right to an equitable adjustment within thirty (30) calendar days after resumption of work. Accordingly, **name of contractor** should submit any request for equitable adjustment to **name of servicing CO** at **(address of CO)**.

No claims for reimbursement for the period of a shutdown shall be submitted until I have instructed you to submit them.

If you have any questions regarding the cancellation of this stop-work order, please contact me at **CO's telephone number**.

Sincerely,

CO's Name

Contracting Officer

**APPENDIX 42.3.3-D
SAMPLE DELAY DELIVERY NOTIFICATION**

Date

Contractor's Point of Contact

Title

Contractor Name

Contractor Address

RE: Contract Number: **(insert contract number)**, **Performance During Funding Hiatus**

Dear **Contractor's Point of Contact**:

(AGENCY) appropriations expired on **[Insert Date]**. As of **[Insert Date]** there are no annual appropriations for Federal Agencies, including (AGENCY).

The (AGENCY) has identified the subject contract as one whose delivery date is imminent. Government personnel responsible for receiving delivery or performing inspections may not be available during the period of the funding gap. Accordingly, you are hereby directed to suspend any attempts to deliver until you are notified otherwise by the Contracting Officer. The Government will not be liable for any costs you may incur if you attempt delivery during the period of the funding gap.

Sincerely,

CO's Name

Contracting Officer

APPENDIX 42.3.3- E
USE OF THE EICHLEAY FORMULA FOR OTHER THAN COSTREIMBURSABLE
CONTRACTS

The Eichleay formula is a very complex area in contract law. COs with questions, regarding whether the prerequisites for use of the Eichleay formula have been met prior to application of the formula, should contact the Office of General Counsel (OGC).

The use of the Eichleay formula is a legally permissible method of computing unabsorbed home office costs resulting from Government-caused delay. In fact, the Eichleay formula is the exclusive means for compensating a contractor for unabsorbed home office cost cases arising out of construction contracts. It has also been applied to the recovery of unabsorbed home office costs on manufacturing/supply contracts. The following two prerequisites are required for application of the Eichleay formula:

First, there must be a Compensable delay (i.e., the Government must have caused a compensable delay or disruption in the contractor's performance).

Second, the contractor must have been on standby during the delay. Note that the standby test focuses not on the idleness of the contractor's work force (either assigned to the contract or total workforce), but on suspension of work on the contract. Once the contractor has established standby status, the burden of proof shifts to the Government to establish that the contractor did not suffer or should not have suffered any loss because it was able to either reduce its overhead or take on other work during the delay.

The Eichleay formula requires three steps:

- 1) To compute the total fixed overhead allocable to a contract, multiply the total home office costs incurred during the contract period times the ratio of billings from the delayed contract to total billings of the firm during the contract period;
- 2) To compute the daily contract fixed overhead rate, divide the fixed overhead expenses allocable to the contract by the actual contract performance period. The actual performance period, which is expressed in number of days, includes the delay period; and
- 3) To compute the amount recoverable, multiply the daily contract fixed overhead rate (Step 2) by the number of government caused delay days.

If the above prerequisites have been met, the burden then shifts to the Government to show that the contractor did not suffer or should not have suffered any loss, because it was able to either reduce its home office costs or take on other work during the delay. If the Government cannot meet this burden and the aforementioned steps have been established, a contractor may only recover unabsorbed home office costs using the Eichleay formula as the basis for its calculation of the amount of such home office costs.

In many cases, it may be premature for contractors to claim a loss since employees could have been diverted to other contracts, contract performance subsequent to the shut-down period may enable them to recoup these costs, and contractors may have been able to reduce their home office costs, or to take on other work during the delay.

CHAPTER 42 CONTRACT ADMINISTRATION AND AUDIT SERVICES

Section 42.3 Contract Administration Office Functions

Subsection 42.3.4 Contract Management Plans (September 2019)

42.3.4.1 Purpose.

The purpose of this subsection is to provide policy and guidance on the development of Contract Management Plans (CMPs). A CMP is an important tool to guide the Contracting Officer's Representative (COR) in monitoring the contractor to ensure the government receives contract goods and services in a timely manner. A good plan is essential. Without a clear understanding of the goals, how they will be achieved, and monitoring progress during execution, the government is at risk of not having requirements fulfilled within budget or on time. The purpose of the CMP is to support contract management oversight responsibilities with a government plan of action and contract communications strategy to ensure proper contract oversight and quality performance.

42.3.4.2 Background.

Good contract management begins with meaningful acquisition planning in which the Contracting Officer (CO) works closely with all necessary stakeholders to integrate project objectives with contract management planning (See EPAAG 7.1 Acquisition Planning). The CMP provides a framework for the interactions between various government staff, especially the COR and the contractor, from the date the contract is awarded through contract completion. A CMP solidifies the framework and is critical to effective program execution.

Contract management begins after contract award and is performed by the entire Government Contract Management Team. Contract management activities involve overseeing contractor performance to ensure the government's objectives are met.

42.3.4.3 Authority/Applicability.

The policy and guidance regarding contract management plans applies to EPA acquisitions, except supplies, over the simplified acquisition threshold for facilities, Superfund, Capital Planning and Investment Control (CPIC)/Information Technology (IT), all severable services over \$10 M, and any other high risk requirement based on the CO's discretion (e.g., T&M or Cost Reimbursable services.)

42.3.4.4 Definitions.

Following are terms and definitions, as they apply to this section:

Contract Management Plan (CMP) – A plan that contains all the key information about how a contract will be managed; that is, how the contract will be administered and executed successfully

through establishing systems or processes to monitor and ensure the contractor complies with the terms and conditions of the contract.

Contract Management Team (CMT) – Government personnel involved in either an advisory capacity or in the direct management of the contract and who oversee contractor performance to ultimately achieve the government's objectives. The CMT includes project/program managers, technical, legal, contracting and financial officials/representatives, facilities, and security directors.

42.3.4.5 Policy.

The CMP is one of the primary tools by which the government can ensure contract objectives are achieved while simultaneously reducing cost, technical and schedule risks. The CMP is the key document guiding the coordinated efforts of the contract management team throughout the term of the contract. Identifying team members' roles and responsibilities early on, as well as applying the appropriate level of surveillance and risk mitigation to contract oversight, is critical to effective contract management. The CMP fuses functional activities and human resources into one corporate business oversight and communication strategy. The level of detail may vary depending on the complexity of the contract. The CMP should specify all parameters related to government oversight and contractor performance. Minimum requirements are included in paragraph (b) below.

(a) Requirement and Approval.

(1) All CMPs should be reviewed and approved as follows within 30 business days after contract award:

Threshold	Approver
< \$10M	One Level Above CO
Greater Than \$10M and under \$25M	Branch Chief (BC) or Regional Acquisition Manager
\$25M and Above	Chief of the Contracting Office (CCO)

(2) The CO is responsible for final distribution of the CMP to the contract management team and contractor.

(3) If a CMP is required, but not developed, the contract file shall be documented by completion of a D&F detailing the business case for the reason(s) that it is not in the best interest of the government to develop a CMP, and approved by the Senior Procurement Executive (SPE).

(b) Contract Management Plan Elements.

CMPs are unique to each acquisition and vary in complexity depending on the contract requirements. They can be minimal and contain only high level information or can be very detailed. However, CMPs should be discussed early in the requirement and refined and approved within 30 business

days after contract award. It is the responsibility of the CO, in conjunction with the COR, to develop the plan in conjunction with acquisition planning activities (See EPAAG 7.1). Details, such as schedule, contact information, responsibilities, etc., can be finalized after contract award. The Post-Award conference is an ideal time for these discussions and clarifications to occur. Implementation of the plan should begin immediately after distribution of the approved plan.

The CMP is a living document that should be reviewed by the CMT as necessary and updated throughout the life of the contract. Circumstances may require CMT adjustments during contract administration, which should be with the agreement of all government parties involved in execution of the contract and by bilateral modification to the contract, if required. The modified CMP may also be subject to approval in accordance with the requirements noted in (a)(1) of this section, if there is a cost increase.

The CMP may be scoped and scaled to the individual requirement. However, it is important to ensure the elements of the CMP are consistent with the terms and conditions of the contract, the Statement of Work (SOW), or Performance Work Statement (PWS), and the COR delegation of authority. Following are elements, if applicable, to be included in the CMP:

- Designate and list contact information for the CO and COR (or other individual) who will be responsible to manage the contract and will ensure that the work is completed.
- Designate and list the roles and responsibilities of all CMT government members and the contractor, including authorities and limitations.
- Describe contract performance monitoring and oversight activities to ensure the government receives high quality services (e.g., QASP).
- Describe the communication process and protocol, including electronic communications (e.g., use of EAS and FedConnect).
- Determine the reporting requirements of the contractor and government review process. (Should be included in the PWS.).
- List and describe all the performance measures and key metrics.
- Describe the strategy for cost reduction and/or monitoring costs.
- Describe the change control management process.
- Clarify the invoicing and verification documentation requirements and procedures, including how unliquidated costs will be tracked and reported.
- If the contract is a Labor-Hour, Time-and-Materials, or cost-reimbursement:
 - Document all special invoice requirements, including submission of supporting documentation, period of performance notation, etc.
 - Note the process for change of key personnel, including verification of contractor personnel qualifications.
- Discuss any unique, unusual, or items of special emphasis in the contract that are especially important (Stop Work process, in the event of sequestration and/or shutdown, holidays, telework, etc.).
- COR delegation of authority, roles, and responsibilities.
- Describe the closeout process, including Contractor Performance Assessment Reporting System (CPARS).

The CMP process may also provide a venue for discussing and resolving issues with regard to contract terms and conditions that arise during/throughout contract performance, such as:

- Describe in detail the expected deliverables.
- Describe the inspection and acceptance criteria and processes. (How will you know the work has been completed to the quality required? Is there a QAP?)
- List the project schedule and milestones.
- Describe the consequences of not meeting the schedule and/or the quality required and how it will be rectified.
- If there will be subcontractors, list the approved subcontractors and describe their role and the procedure to replace, add or change a subcontractor on the list.
- If there is government furnished property, describe the specifics governing the obtainment, usage, inventory requirements, and disposal.

Other items that also may be included, as applicable:

- Handling Conflict Of Interests (COI)
- Handling Confidential Business Information (CBI)
- Government Property Requests
- Indirect Cost Rate Adjustments
- Award Term, Award Fee, Incentives
- IT approval
- Contract specific or any unusual terms or conditions
- EPASS for contractor's staff

(c) Roles and Responsibilities.

(1) Contracting Officer and Contracting Officer's Representative.

The COR is responsible for the oversight and execution of the contract and must be designated during acquisition planning. The CO and the COR shall develop the management plan together. The COR shall be involved, along with the CO, in discussing the details of the plan with the contractor to avoid any misunderstandings.

Communication between the CO and COR is essential. The CO and COR must have a clear understanding of their own roles and responsibilities, as well as each other's roles and responsibilities, and the specific requirements and expectations for successful contract performance. The CO and COR should communicate often and meet regularly.

The contract-level COR should meet as necessary with the Task Order COR and/or Delivery Order COR to monitor progress of the total contract. The COR should notify the CO and discuss with the CO any possible changes to the contract task order or delivery order that may be required for successful completion of the contract. However, the COR shall in no way commit the government to the contractor regarding any change.

The COR is responsible for contract oversight and maintaining documentation verifying contractor compliance with the terms and conditions of the contract. The COR should document, at minimum, reviews of work plans, monthly progress reports, invoices, receipts, deliverables, technical reports, and tracking of invoiced costs against activities reported in the monthly progress reports. The COR should also document any site visits. The COR should ensure that the skill level, labor mix, and

contractor personnel qualifications meet the specifications in the contract.

The CO will meet with the COR as often as necessary, but no less than once a year, to inspect the COR's records and provide feedback. As the CO and COR may not reside at the same physical location, inspection of records and feedback may be accomplished through alternate means. The COR may send the physical file by mail or share electronically by email or Sharepoint, for example. Feedback may also take an alternate form, such as a telephone call, email, or videoconference. The CO's review of the records shall be documented in the official contract file using the Record Inspection Checklist below. CO review of the COR's files may occur more frequently if the CO deems it necessary for successful contract execution.

(2) Government Contract Management Team.

The CO and COR play dominant roles on the contract management team. However, the team must involve all stakeholders (e.g., finance, budget, Office of Small Business Programs (OSBP), Office of General Council (OGC), property, subject matter experts, etc.) as necessary to ensure the successful execution of the contract.

The team should meet as often as necessary to discuss the contractor's performance, delivery schedule, quality, any security, risk or cost issues and anything else that affects contract performance.

The team can ensure contract success by using the plan to:

- Coordinate and solicit input from all government staff in contract management;
- Disseminate the CMP for all parties, as appropriate, to become familiar with and refer to on a daily basis;
- Identify the CMP as a key component for contract oversight;
- Meet regularly with all parties, as appropriate, performing contractor oversight to share contractor status;
- Discuss any key contract vulnerabilities or performance risk areas;
- Decide on any course of action, and determine future activities;
- Track and report on milestones from the CMT contractor deliverables chart;
- Identify and immediately resolve any issues that will affect contract performance;
- Take immediate action on any risk areas that develop during term of the contract;
- Document revised responsibilities and changed scope or cost during life of contract in the CMP after appropriate contract changes are executed by the CO.

Contract Management Plan

PR/Solicitation/Contract Numbers: _____

Requestor/Requesting Department: _____

CO: _____

COR: _____

1. Contract Information:

Contract Type: _____

Period of Performance:

Total (inc. Options): From: _____ to: _____

2. Team Members - Roles, Responsibilities & Contact Information:

List roles, responsibilities, and contact information for the CO, COR, and all Contract Management Team (CMT) members. Include authorities and limitations.

Team Member Name:	
Email:	
Phone:	
Role:	
Responsibilities:	
Authorities & Limitations:	

Team Member Name:	
Email:	
Phone:	
Role:	

Creation Date:

Revision #

Revision Date:

Responsibilities:
Authorities & Limitations:

Team Member Name:	
Email:	
Phone:	
Role:	
Responsibilities:	
Authorities & Limitations:	

3. Contractor:

List roles, responsibilities, and contact information for the contractor. Include authorities and limitations.

Contractor:	
Address (street):	
Address (city, state, zip):	
Email:	
Phone:	

Contractor's Representative:	
Email:	
Phone:	
Role:	
Responsibilities:	

Authorities & Limitations:

4. Communication Process and Protocol:
Describe the communication process and protocol, including electronic communications (e.g., use of EAS and FedConnect).

Formal communications with the Contractor

Include in this section technical direction to the contractor, correspondence instructions, and correspondence controls and tracking systems. This section should reference contract requirements regarding formal communication.

Informal communications

Address non binding communication and meetings with CMT. Informal communication can occur between members of the CMT and any contractor employee. This type of communication is non-binding for both the Government and contractor and does not constitute contract direction.

Outside communications

Include in this section the communication protocol with parties other than EPA staff (e.g. on CMT and other government agencies (state & local government), etc.) regarding responsibilities and work scope. The section should address the coordination process with CMT members. It is critical that communications with entities outside of the contractual relationship between the contractor and EPA not be construed as contractual direction to change the scope or terms and conditions of the contract.

5. Government Furnished Property(GFP)/Government Furnished Equipment(GFE):
Describe/reference the specifics governing the obtainment, usage, inventory requirements, and disposal of any government furnished services, equipment, property, or information identified in the contract. Also, discuss the strategy for furnishing and monitoring the GFP/GFE and the strategy for ensuring the contractor maintains lifecycle accountability of all furnished sensitive and high risk property including contaminated assets. If applicable, address the approach for ensuring the contractor complies with the property clauses identified in the contract. Identify the key individuals responsible for ensuring timely provisions to the contract. Include government reviews approvals and performance, cost and/or schedule impacts if not timely delivered.
6. Monitoring, oversight, and evaluation of contractor performance:

Describe the methods for monitoring and evaluating the performance-based objectives. The Quality Assurance Surveillance Plan (QASP) addresses the methods for monitoring performance against the contract. This section should address contractor oversight (e.g. field inspections, monthly assessment of project status, contract administration, deliverable reports, budgetary data, physical inspections, etc.).

7. Deliverable:

Describe in detail the expected deliverables and the process for receipt, including the individuals involved.

8. Inspection and acceptance process:

Discuss the strategy for ensuring contract requirements conforms to quality assurance provisions and address the roles and responsibilities of the individuals involved in this process. Also, reference the sections in the contract that addresses inspection and acceptance.

9. Reporting Requirements:

This section should identify what reports are due, when & to whom. Details should include draft reports, time period for government response, final revisions and Government acceptance.

10. Project Schedule with Milestones:

This section should identify any key milestones and dates for determining contractor progress.

Milestones	Target Date	Actual Date

11. Performance Measures & Key Metrics:

Describe the methods for monitoring and evaluating the performance-based objectives. The Quality Assurance Surveillance Plan (QASP) addresses the methods for monitoring performance against the contract. This section should address contractor oversight (e.g. field inspections, monthly assessment of project status,

contract administration, deliverable reports, budgetary data, physical inspections, etc.).

12. Fees, penalties, and adjustments;

Discuss any consequences of not meeting the schedule and/or the quality required and how it will be rectified. This section should also address any award fees or incentive fees for the contractor completing work ahead of schedule and/or below budget. Determining factors and the resulting fees, penalties and adjustments should be discussed in detail. This section should also include any requests for Economic Price Adjustments (EPA), if applicable.

13. Describe the change control management process.

Discuss the strategy and procedures for managing the formal change control process to scope, cost and schedule as well as mitigating variances to approved scope, cost or schedule. Encourage the contractor to review the contract clause associated with changes. This paragraph should include the individuals responsible for the review and approval of baseline changes and variances.

14. Strategy for cost reduction and/or monitoring costs:

In this section, address any cost reduction or removal of value added contract requirements and procedures. Also, include in this section, the roles and responsibilities of the individuals involved in the process.

15. Invoicing & Verification Procedures:

Discuss the plan or process (e.g. instructions, certifications, documentation, etc.) for reviewing and approving invoices; and reference the invoice requirements addressed in the contract. Also, discuss the roles and responsibilities of those individuals that have direct involvement in the process. Clarify the invoicing and verification documentation requirements and procedures, including how lagging costs will be tracked and reported.

16. If the contract is a Labor-Hour, Time-and-Materials, or cost-reimbursement:

- a. Document all special invoice requirements, including submission of supporting documentation, period of performance notation, etc.

17. Note the process for change of key personnel, including verification of contractor personnel qualifications.

18. Subcontractors:

If there will be subcontractors, list the approved subcontractors and describe their role and the procedure to replace, add or change a subcontractor on the list.

19. Discuss any unique, unusual, or items of special emphasis in the contract that are especially important (Stop Work process, in the event of sequestration and/or shutdown, holidays, telework, etc.)

20. Contract Closeout:

Address the strategy for ensuring that requirements of contract are met when the contract is physically complete. Contract closeout shall conform to the requirements of FAR 4.804, Closeout of Contract Files. Discuss the closeout process, including Contractor Performance Assessment Report Survey (CPARS).

Other items that also may be included, as applicable:

- Handling Conflict of Interests (COI)
- Handling Confidential Business Information (CBI)
- Government Property Requests
- Indirect Cost Rate Adjustments
- Award Term, Award Fee, Incentives
- IT approval
- Contract specific or any unusual terms or conditions
- EPASS for contractor's staff

COR Records Inspection Checklist

Contract Number

Project/Site Name: _____

OBJECTIVE				
The purpose of this review is to ensure COR files are in compliance with the Federal Records Act which requires a government employee to make and preserve records and information which documents the Agency's functions, policies, decision, procedures, and essential transactions, including Federal regulations requiring records to be properly stored, preserved, and available for retrieval, and in accordance with records retention schedules.				
QUESTION	Yes	No	N/A	Comments/Action/Recommendations
1. Does the file contain the Statement of Work/Performance Work Statement (SOW/PWS), and/or related information such as Contractor reporting requirements for the contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Does the file contain a Quality Assurance Program Plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Contract/Work Assignment/Delivery Order/Task Order Package - Does file contain the following: <ul style="list-style-type: none"> • Procurement Request form (1900-8) • SOW/PWS • IGCE with explanation/worksheets • COR nomin/app't form (1900-65) • COR Appointment Memo • Training Deferment Request/Approval • Proper approvals for IT hardware and software related efforts (OMS/OPPD) • Proper approvals for public information when collected from 10 or more individuals, (OMS) • Quality Assurance Review forms, reviewed by OMS • Justification for Need for Government Furnished Property and copy of Deviation • Intra-agency funding request and approval • Justification for Sensitive and/or Vulnerable Services • Conflict of Interest Determination • Non duplication of effort statement 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>	
4. Does the file contain the Contractor's staffing, management, cost proposal and any required Government notice of approval?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Does the file contain Amendments /Modifications?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Does the file contain task order/delivery order technical direction information?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

7. Does the file contain Monthly Technical/Financial Progress Reports ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8.. Does the file contain Invoices and invoice Reviews ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the file contain other special technical/financial reports ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10. Does the file contain Financial Tracking Reports ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Does the file contain Deliverables and related correspondence (approvals, rejections, comments), for: <ul style="list-style-type: none"> • Draft Deliverables • Final Deliverables 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	
12. Does the file contain an Inventory of Government Furnished Property (list and description)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13. Does the file contain Correspondence : <ul style="list-style-type: none"> • Letters • Records of meetings and telephone discussions • Memoranda for the Record 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
14. Does the file contain Evaluation of Contractor performance , for: <ul style="list-style-type: none"> • Past Performance Evaluation input for database • Cost Plus Award Fee (CPAF) Evaluation Forms • Peer Reviews • Other Evaluations and/or Reports, as required. 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
15. Does the file contain Administrative information for: <ul style="list-style-type: none"> • Agency/program regulations/orders, directives, memoranda • Agency/program reports on contract management • Contract Management plan for the overall contract, including Management Controls 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

ADDITIONAL NOTES: _____

Reviewer: _____ Date: ____/____/____

Title: _____

I have reviewed this Inspection Report and have received guidance on any areas requiring improvement from the Reviewer, as applicable.

COR: _____ Date: ____/____/____

ADDITIONAL COR INFORMATION:

MAINTENANCE OF RECORDS:

Your files should be maintained in a manner that would allow someone taking over your COR duties to ascertain which deliverables have been accepted, if any deliverables are late, how much money remains on the order, a history of technical direction, and so forth. Keep in mind your files are subject to audit by officials within the Agency, such as the Office of the Inspector General, or outside the Agency, such as the General Accounting Agency. Certain documents (not all of them) may be released to outside parties under the Freedom of Information Act ("FOIA"). Thus, it is very important that your files be accurate and current.

COR RESPONSIBILITIES DURING CLOSE OUT:

CORs will be requested to assist in part of the contract closeout process. Listed below are the tasks the COR normally will be responsible for performing:

1. Certifying that all technical requirements of the contract have been satisfied, that the products or services have been satisfactorily completed within the contract amount, and that the final report and all deliverables have been received and accepted.
2. Reviewing and determining the accuracy of the contractor's reporting of inventions
3. Examining the completion voucher (on cost reimbursement contracts)
4. Evaluating the contractor's performance under the contract.

COR RECORDS RETENTION REQUIREMENTS:

The record retention length depends on the nature of the contract. Generally:

Regular contracts: 6 years (See [Schedule 1004](#) for more information)

Superfund contracts: Retention varies (See [Schedule 1036](#) for more information)

CONTRACT MANAGEMENT PLAN CHECKLIST

KEY: P = Prepare R = Review C = Concur M = Monitor AC = Accept AP = Approve N/A = Not Applicable								
Duties	TO COR	TOCOR's Supervisor	WA COR	WACOR's Supervisor	Contract Level COR	COR's Supervisor	CO	CO Supervisor
1. Review contractor work plans	R		R		R/C		AP	M
2. Provide technical direction	P		P		M		M	M
3. Monitor contractor's performance	R/M	C	R/M	C	R/M	C	R/M	M
4. Review/accept deliverables and completion reports	R/A P		R/AP		R/AP		R	M
5. Approve invoices a. suspend payment b. disapprove payment	R/C		R		R/AP		M	M
6. Monitor contractor cost (labor, equipment)	R/M		R/M		R/AP		AC	M
7. Handle contract security (badges, access, segregation of work space)	M		M		M		M	
8. Request modifications to work Assignments	P		P		R/C	C	AP	M
9. Approve contractor travel	R		R		AP	C	M	M
10. Approve contractor training	R		R		R	C	AP	M
11. Prepare equipment justifications					P	C	AP	M

12. Provide and monitor Government furnished equipment	P/M		P/M		P/M	C	AP	M
13. Review monthly financial and technical progress reports	R	M	R	M	R	M/R	R	M
14. Review SOWs	P	R	P	R	C	C	AP	M
15. Respond to findings and recommendations from contract management reviews	P/M	C	P/M	C	AC	C	AP	
16. Ensure work performed is within scope of contract	M	M	M	M	M	M	M	M
17. Notify CO of COI issues	M	M	M	M	M	M		
18. Assist in closeout of completed contract	P	C	P	C	P	C	AP	M

KEY: P = Prepare R = Review C = Concur M = Monitor AC = Accept AP = Approve N/A = Not Applicable

Section 42.4 – Correspondence and Visits

Subsection 42.4.1 - Contracting Officer Site Visits for On-Site Contractors (June 2015)

This subsection was previously EPAAG Subsection 37.1.2 and Contracts Management Manual Section 3.1.

42.4.1.1 Purpose.

This policy notifies employees involved in contract management about the potential vulnerabilities in personal services associated with contractors performing on-site at a government facility. This policy is to ensure that Agency personnel comply with the requirements set forth in the Federal Acquisition Regulation (FAR) and Agency policy for interacting with contractors performing on-site.

42.4.1.2 Background.

FAR 37.104 describes a personal services contract as a contract that is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. Potential vulnerabilities that may be construed as personal services include:

- EPA employees exercising excessive supervision over contractor and subcontractor staff;
- Close working relationships which lead to personal services; and
- Lack of effective integration of contract language and oversight.

42.4.1.3 Authority/Applicability [Reserved].

42.4.1.4 Definitions [Reserved].

42.4.1.5 Policy.

Contracting officers (COs) should perform on-site visits periodically (e.g., biennially) on all on-site contracts, and if weaknesses are identified, the COs shall perform annual visits. A sample guide (Appendix 42.4.1-A) is available for use during these visits. In addition, COs will discuss personal services issues with contract-level Contracting Officer Representatives (CORs) for individual on-site contracts on an annual basis. Also see FAR 42.402 Visits to contractors' facilities for additional guidance.

This policy should be distributed to all employees involved in contract management (e.g., COs, contract specialists (CSs), CORs, BPA Call Ordering Officers).

APPENDIX 42.4.1-A
CONTRACTING OFFICER GUIDE FOR PERFORMING SITE VISITS FOR ON-SITE
CONTRACTS

The following guide is provided as a sample tool to be used when appropriate by contracting officers (COs) when conducting site visits for on-site contractors. On-site contractors are contractors whose employees are physically located at the Agency's facility while they perform their contractual functions.

(a) Purpose

The purpose of this review is to objectively evaluate: 1) whether or not any personal services activity is occurring, and 2) whether or not conditions exist that may create personal service vulnerabilities and what actions should be taken to avoid these vulnerabilities.

(b) Scope

For on-site contracts we recommend these reviews consist of the following steps: 1) review of contract PWS/SOW, 2) review of applicable work assignment or delivery order PWSs/SOWs, 3) interviews with contractor point of contact and program or regional staff, 4) interviews with contractor and program management points of contact, 5) inspection and observation of on-site operation, 6) verification of adherence with Agency procedures (e.g., co-location of employees, proper use of badges, use of Agency equipment), and 7) identification of internal management controls strengths and weaknesses. At the completion of the review, a written report should be prepared documenting the results. For additional information, see FAR 37.104 and EPA Order 1901.1A, *Use of Contractor Services to Avoid Improper Contracting Relationships*.

(c) Criteria

The following are examples of the types of questions and issues that should be explored:

Observation of Physical Space (should be unannounced if possible)

Proper procedures to avoid personal services:

- Is the contractor's office space clearly marked by a sign indicating the area is occupied by a contractor and includes the contractor's name?
- Is the contractor's on-site space physically separated from Agency space?
- Has the Agency given the contractor staff access to Agency fax machines, copiers, computers or file rooms? If so, has the Agency properly set schedules and priorities for the use of any shared equipment? Is this specified in the contract? Has the Agency given the contractor access to any property and/or equipment not specified in the contract?

- Does the contractor staff routinely wear identification badges which clearly identify they are contractors?
- Does contractor staff clearly identify themselves as contractors when answering their telephones (or on voice mail greetings)? (You can call the contractor(s) either before or after your visit to check.)
- Are subcontractors physically located on-site? If so, is their space separate from Agency space, etc.? Do Agency personnel work directly with subcontractors?

Observations of Working Relationships (interview Agency and contractor point of contact separately)
Observed actions that may indicate improper personal services:

- Do Agency employees direct or instruct contractor staff to perform tasks?
- Has anyone in the Agency recommended, or refused to have, a specific contractor staff assigned to work?
- Do Agency employees instruct the contractor without putting technical direction in writing?
- Has an Agency employee suggested a promotion or bonus for contractor staff, or provided input on the job performance of individual contractor staff? Has any Agency employee commended, in writing, any contractor staff specifically?
- Has any Agency employee participated in the hiring or firing of individual contractor staff, including sitting in an interview for potential hires, or suggesting who to hire?
- Has any Agency employee invited contractors to attend Agency meetings not related to the contract work (e.g., staff meetings, holiday parties)?
- Has any Agency employee entered a contractor's work area when no contractor supervisor is present? If so for what reasons?
- Has any Agency employee (e.g., COR) directly requested contractor personnel to perform work not otherwise required by the contract?
- Has any contractor employee participated as a member of an Agency committee planning an Agency award ceremony?
- Has any Agency employee acted to resolve a personnel complaint from a contractor employee?

- Has any Agency employee assigned tasks to, or prepared work schedules for, contractor employees, including approving when a contractor employee can go on leave?
- Has the Agency retained the right to supervise the work of contractor staff, or reserved the right to control the number of people employed and duties of individual contractor employees?

Are contractor staff used interchangeably with Agency staff to perform the same functions?

- Are contractor personnel integrated into the Agency's organizational structure (mixed teams)?
- Have CORs received appropriate training on how to interact with contractor personnel performing on-site?

(d) Report

Upon completion of the review, the CO needs to document the results of the review in a written report. The report need not be exhaustive, but should summarize at a minimum the following:

- Introduction - Identify which contracts were reviewed; where and when the review was conducted and by whom; and to whom the report is being addressed;
- Sources - Provide a description of the sources of the review; e.g., listing of the documents reviewed, individuals interviewed;
- Findings - Listing and brief explanation of any findings, to include not only problem areas but also positive steps taken to prevent these occurrences;
- Recommendations - Any recommendation for correcting specific findings and any follow-up actions to be completed; and
 - Conclusion - A statement as to whether or not the contract has had personal service activity, or is vulnerable to this type of activity, and what actions have been or will be taken.

A copy of the report should be maintained by the CO in the contract file.

Section 42.7 – Indirect Cost Rates

Subsection 42.7.1 - Indirect Cost Rate Agreements (May 2003)

This subsection was previously Unit 42.1 of the Acquisition Handbook.

42.7.1.1 Purpose.

This subsection establishes the procedures for incorporating indirect cost rate agreements into Agency contracts.

42.7.1.2 Background.

This section was originally issued as Procurement Policy Notice (PPN) No. 95-02 dated May 8, 1995, from Betty L. Bailey, Director Office of Acquisition Management to OAM Division Directors, Regional Contracting Officer Supervisors, and Ray Spears (Office of General Counsel).

42.7.1.3 Authority/Applicability.

FAR 42.703, Indirect Cost Rates, states that a single agency is responsible for establishing indirect cost rates for a contractor and that these rates are binding on all agencies and their contracting offices unless otherwise specifically prohibited by statute. After the cognizant agency has negotiated the indirect cost rates, it is responsible for making distribution of the indirect cost rate agreement to the contractor and to each affected contracting agency. (See FAR 42.706.)

42.7.1.4 Definitions [Reserved].

42.7.1.5 Policy.

Normally, the COs in the Financial Analysis and Oversight Service Center (FAOSC) are responsible for establishing indirect cost rates and distributing the rate agreements. This includes distribution to the RTP Financial Management Center (FMC) to allow for the accurate payment of indirect costs. The indirect cost rate agreements must identify the time-frame within which contractors must submit adjustment vouchers to implement the rates established.

FMC will notify the contract COs if the contractor does not begin billing the indirect costs in accordance with the terms of the rate agreements. Project Officers (POs) will notify contract COs if contractors have not submitted their separate adjustment vouchers showing the calculations for each rate and period within the stated time-frame. COs are also responsible for ensuring that the most current indirect cost rate agreements are filed in Agency official contract files.

Paragraph (b) of EPAAR 1552.242-70, "Indirect Costs" (DEVIATION) is revised to clarify that

separate indirect cost rate agreements meet the requirements of FAR 42.704 for adjustment of billing and final rates.

42.7.1.5.1 Roles and Responsibilities

(a) Billing Rates

(1) Negotiations

Normally, a CO in the FAOSC is responsible for the review, negotiation, and revision of indirect cost rates for contractors under the cognizance of EPA. However, in some instances, when only one contract is impacted, other COs may negotiate revised billing rates. Before entering into these negotiations, COs outside of FAOSC must first coordinate with FAOSC.

When another Agency is cognizant, the rates negotiated are accepted by the FAOSC CO. Note: when FAOSC receives recommended rates from audit organizations such as DCAA, the FAOSC may negotiate new rates or accept the recommended rates. DCAA is not a cognizant agency.

If FAOSC negotiates the rates, the FAOSC CO shall notify all affected contract COs who in turn will notify their POs of the revisions and resulting cost impacts to their contracts. The FAOSC CO will prepare the indirect cost rate agreement and submit the agreement to the contractor for signature. Upon receipt of the contractor's signature, the FAOSC CO will sign the agreement.

(2) Documentation and Distribution

The FAOSC CO will distribute copies of the agreement to the contractor and to each affected agency in accordance with FAR 42.706. The FAOSC CO will also provide copies of the agreement to all contracting offices for the EPA contract files. The FAOSC will distribute copies to all contracting offices for Agency COs, to field office contract support branches, and to RTP-FMC for their files. Contract COs will distribute copies of the agreement to their POs.

The contract CO will place a copy of the indirect cost rate agreements in the official contract file. No separate contract modification to incorporate the indirect cost rate agreement is required. If a contract CO chooses to prepare a contract modification, no changes may be made to the indirect cost rate agreement without the prior approval of the FAOSC CO.

If a contract contains indirect cost rate ceilings which are less than the rates contained in an agreement, as stated in the agreement, these ceilings will take precedence over an agreement's newly negotiated rates. The contract CO should remind the contractor and RTP-FMC that final and billing rates shall not exceed the ceiling rates specified in the contract.

Contract COs are responsible for modifying their contracts to ensure that the Integrated Contract Management System and Contract Payment System are updated to reflect accurately the name of the CO and PO administering the contract.

In accordance with the terms of the rate agreement, the contractor has 60 days from the date of the signed agreement in which to submit a voucher for any billing adjustments. POs should notify contract COs if contractors have not submitted their separate adjustment vouchers showing the calculations for each rate and period within the stated time-frame. The contract CO must take all necessary follow-up action if they learn that the contractor has not submitted a voucher within the time specified in the agreement.

(b) Final Rates

All final rates, whether or not EPA is the cognizant agency, are the responsibility of COs in FAOSC. The procedures for documentation and distribution are similar to those for billing rates described above.

A sample indirect cost rate agreement is attached.

(c) Contract Clause

Where possible, COs in the contracting activities should modify their contracts to incorporate the revised first paragraph of paragraph (b) to 1552.242-70, "Indirect Costs" (DEVIATION) as shown below.

(b) Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the appropriate Government representative in accordance with FAR 42.704 by means of a separate indirect cost rate agreement or a contract modification subject to adjustment when the final rates are established. The established billing rates are currently as follows:

Cost Center	Period	Rate	Base
_____	_____	_____	_____
_____	_____	_____	_____

APPENDIX 42.7.1-A
INDIRECT COST RATE AGREEMENT

In accordance with FAR 42.703 and EPAAR clause 1552.242-70, "Indirect Costs":

(a) This Agreement is entered into by and between the U.S. Environmental Protection Agency (EPA)/Federal Government and the contractor. (Federal Government is shown if EPA is cognizant agency. EPA is shown if EPA is not the cognizant Agency.) The purpose of this Agreement is to establish negotiated indirect cost rates applicable to all specified EPA and other Federal Government contract(s) and subcontract(s). The rates apply equally to subcontracts under prime contracts subject to the cost principles of FAR Part 31 and subject to limitations in each subcontract.

(b) Subject to the provisions listed elsewhere in this Agreement, the rates listed below are established as negotiated indirect cost rates, in effect for the period(s) specified, applicable to all specified EPA and other Federal Government contracts and subcontracts and are incorporated into the contract in accordance with FAR 52.216-7 and EPAAR 1552.242-70.

(c) Rates:

	<u>Effective Period</u>			
<u>Type</u>	<u>From</u>	<u>To</u>	<u>Rate</u>	<u>Base</u>
<u>Billing:</u>				
Fringe Benefits	1/1/00	12/31/00	27.00%	(a)
Overhead	1/1/00	12/31/00	18.00%	(b)
Handling Charge	1/1/00	12/31/00	4.00%	(c)
General and Administrative Expense	1/1/00	12/31/00	18.00%	(d)
Fringe Benefits	1/1/01	12/31/01	28.00%	(a)
Overhead	1/1/01	12/31/01	17.00%	(b)
Handling Charge	1/1/01	12/31/01	4.00%	(c)
General and Administrative Expense	1/1/01	12/31/01	19.00%	(d)

Fringe Benefits	1/1/02	12/31/02	25.00%	(a)
Overhead	1/1/01	12/31/01	19.00%	(b)
Handling Charge	1/1/01	12/31/01	5.00%	(c)
General and Administrative Expense	1/1/01	12/31/01	18.00%	(d)
<u>Final:</u>				
Fringe Benefits	1/1/99	12/31/99	27.00%	(a)
Overhead	1/1/99	12/31/99	17.00%	(b)
Handling Charge	1/1/99	12/31/99	5.00%	(c)
General and Administrative Expense	1/1/99	12/31/99	16.00%	(d)

Basis for Application:

- (1) Direct labor dollars
- (2) Direct labor plus applicable fringe benefit cost
- (3) Total subcontract dollars.
- (4) Total costs incurred exclusive of General & Administrative expenses and subcontract costs.

(d) Incorporation of this rate agreement into listed EPA and all other Federal Government prime and subcontracts:

- (1) Shall not change any indirect cost rate ceiling, monetary ceiling, contract obligation, or specific allowance or disallowance provided in the terms and conditions of the affected contract(s) and subcontract(s). For those contracts and subcontracts containing indirect cost rate ceilings which are less than the rates contained in the Agreement, final and billing rates shall not exceed the specified ceiling rates in the contract.
- (2) Is not a waiver by EPA of the Limitation of Cost or the Limitation of Funds clauses or authorization for the contractor to exceed the current estimated costs set forth in the contract(s) and subcontract(s).

- (3) Shall not change or otherwise effect provisional billing rates for periods other than those cited in this agreement.
 - (4) Billing rates for periods not cited in this agreement shall be those specified unless revised by another negotiated indirect cost rate agreement or contract modification.
- (e) SPECIAL REMARKS:
- (1) The indirect cost rates contained in paragraph 3 of this Agreement are "final/billing" (as appropriate) rates which apply to the existing contract(s) and subcontract(s) and should not be construed to be forward pricing rates. The rates should not be used as a substitute for examining and analyzing indirect cost rates contained in current contractor proposals.
 - (2) A voucher adjusting the difference between billed indirect costs and the indirect costs resulting from the application of the negotiated indirect cost rates for the periods specified in this Agreement, shall be submitted to the office specified in each contract within 60 days of the date of this negotiated indirect cost rate agreement.

Subsection 42.7.2 - Tracking Contractor Billings (May 2003)

This subsection was previously Unit 42.3 of the Acquisition Handbook.

42.7.2.1 Purpose.

The purpose of this subsection is to ensure that Contracting Officers take appropriate steps to track contractor billings under cost reimbursement and fixed-rate contracts.

42.7.2.2 Background.

EPA's contract invoicing process for cost reimbursement and fixed-rate contracts can be complex. An example of this complexity was a recent case where a contractor submitted invoices at rates lower than the negotiated billing rates. By the time this under-billing was discovered, most of the funds earmarked for use under the contract are canceled and reverted to the U.S. Treasury. A letter was sent to contractors which outlines their need to fulfill the contractual obligations.

This section was originally issued as a memorandum sent from Betty L. Bailey, Director of the Office of Acquisition Management to OAM Division Directors and Regional Contracting Officers on April 1, 1999.

42.7.2.3 Authority/Applicability [Reserved].

42.7.2.4 Definitions [Reserved].

42.7.2.5 Policy.

(a) Contracting Officers must ensure that the following actions are taken:

- (1) Maintain a separate section in the contract file to track audit adjustments and revisions to billing/final indirect cost rates.
- (2) Request adjusting invoices for billing rates as soon as the need for adjustment becomes known. Do not withhold invoice adjustments until contract closeout.
- (3) Remind contractors that separate adjusting invoices should be submitted for each performance period of the contract.
- (4) Follow-up promptly on requests to contractors for submission of audit adjustments and revisions to billing/final indirect cost rates. Ensure that invoices for revisions to indirect cost rates are submitted within the sixty days stipulated in the indirect cost rate agreement.
- (5) Process any other adjusting invoices in a timely manner.

- (6) In the appropriate circumstances, modify contracts to deobligate funds at the earliest appropriate time.
- (7) Use fee withholding procedures, as appropriate in accordance with FAR 52.216-8, Fixed Fee, when a contractor does not submit timely or adequate incurred cost proposals.

Section 42.15 – Contractor Performance Information

Subsection 42.15.1 – Contractor Performance Information (August 2020)

42.15.1.1 Purpose.

This subsection provides EPA’s policies and procedures for recording and maintaining contractor past performance and integrity information in accordance with FAR Subpart 42.15.

42.15.1.2 Background.

Collecting and reporting contractor past performance is a critical function in government acquisitions. All government agencies are required to evaluate past performance before awarding new contracts, and without quality data, the government puts itself at risk of losing valuable tax dollars as a result of poor performing vendors. In addition, evaluation reports can improve existing contracts by regularly communicating to contractors how they are doing and where they need to improve.

FAR Subpart 42.15 requires contractor’s past performance information be collected and maintained by using the [Contractor Performance Assessment Reporting System \(CPARS\)](#). CPARS is the official system for past performance information. The CPARS is a web-enabled application that collects and manages a library of automated contractor report cards and is used for all past performance reports on contracts and orders. The CPARS system includes the following modules:

- CPARS is used to complete evaluations for services, information technology, operations support and systems, architectural and engineering evaluations, and construction evaluations.
- FAPIIS, which stands for Federal Awardee Performance and Integrity Information System, is used to report contractor performance integrity information such as non-responsibility determinations, terminations for default or cause, defective pricing determinations, suspensions and debarments, and administrative agreements issued in lieu of a suspension or debarment.

Previously, both CPARS system modules transmitted directly to the Past Performance Information Retrieval System (PPIRS) where federal acquisition personnel retrieved contractor performance information. However, effective January 15, 2019, PPIRS was officially retired and merged with CPARS. Users will now have one location and one account to perform all functionality. After January 15, 2019, the PPIRS name will only appear in the Federal Acquisition Regulation.

The Office of Management and Budget (OMB) closely monitors the government’s compliance with reporting past performance and integrity information and requires agencies to set and meet mandatory compliance goals. More information regarding OMB’s past performance policies can

be found in the July 29, 2009 Office of Federal Procurement Policy (OFPP) Memorandum titled, [*Improving the Use of Contractor Performance Information*](#).

42.15.1.3 Authority/Applicability.

The authorities for this policy are provisions of the FAR 42.15 and the EPAAG subsection 1.3.1 as they apply to the specific policies and procedures in connection with recording and maintaining contractor past performance information.

42.15.1.4 Definitions/Acronyms.

AO - Assessing Official

AOR - Assessing Official's Representative

CPARS - Contractor Performance Assessment Reporting System - the government-wide evaluation reporting tool for all contractor past performance reports.

DEPOC – Department (Agency) Point of Contact

FAPIS - Federal Awardee Performance and Integrity Information System - a component of PPIRS used to report contractor integrity information, such as non-responsibility determinations, terminations for default or cause, defective pricing determinations, suspensions and debarments, and administrative agreements issued in lieu of a suspension or debarment.

OFPP - Office of Federal Procurement Policy

OMB - Office of Management and Budget

OMS – Office of Mission Support

42.15.1.5 Policy.

In addition to following all FAR Part 42 requirements, EPA contracting and program offices shall be familiar with and follow the principles contained in the [*Guidance For The Contractor Performance Assessment Reporting System \(CPARS\)*](#) (including any future updates) which can be found on the [CPARS website](#) and herein out will be referred to as the CPARS Guide. The CPARS Guide identifies roles and responsibilities and provides procedures and guidance for assessing contractor performance in accordance with FAR 42. In addition to the CPARS Guide, EPA contracting and program offices shall refer to the [CPARS User Manual](#) which provides technical functionality, workflow, and flowcharts.

42.15.1.5.1 Roles and Responsibilities

The contracting officer is responsible for ensuring contractor past performance and integrity information is reported in an accurate and timely manner into the CPARS. However, like all

aspects of the acquisition process, reporting contractor past performance is a team effort, and input from the program office and/or end user is critical to writing quality evaluations. Additionally, in order to be successful, the contracting officer requires support from other Agency personnel, such as the Agency CPARS Department Point of Contact (DEPOC), CPARS Agency Points of Contact (Agency POC), and assigned CPARS Focal Points. General roles and responsibilities for these positions can be found in the CPARS Guide. The following EPA specific requirements for each position are outlined below (all parties must be familiar with and follow the roles and responsibilities included in the CPARS Guide).

- (a) The DEPOC shall be appointed by the Office of Acquisition Solutions (OAS) Policy, Training, and Oversight Division (PTOD) Director and is responsible for the following:
 - (1) Monitoring overall Agency FAPIIS compliance and reporting to the MAX system as required by OMB.
 - (2) Performing an annual evaluation of the quality of EPA contractor past performance evaluations.
 - (3) Establishing Agency specific policies and procedures related to contractor past performance and integrity information as necessary.
 - (4) Assigning Agency CPARS POCs to assist with the overall program.
 - (5) Coordinating and or/providing training to Agency points of contact and focal points as necessary.
 - (6) Serving on the CPARS Configuration Control Board.
- (b) CPARS Agency points of contact shall be assigned by the DEPOC and are responsible for the following:
 - (1) Approving and coordinating appointment of organizational focal points.
 - (2) Providing compliance metrics to the DEPOC.
 - (3) Assisting Focal Points, as necessary.
 - (4) Posting reports and compliance metrics to the [OMS CPARS Sharepoint site](#).
- (c) The Division Directors (DD) or Regional Acquisition Managers (RAM) at each contracting office are responsible for ensuring their organizations are in compliance with all FAR Part 42 reporting requirements and the EPAAG. Specific DD/RAM responsibilities include the following:
 - (1) Nominating Focal Points and alternate Focal Points to the Agency POC for approval.
 - (2) Ensuring Focal Points and alternates are trained in their duties and responsibilities.
 - (3) Developing procedures to ensure all required contracts/orders are registered in CPARS within 30 calendar days of award.
 - (4) Monitoring timely completion of reports.
 - (5) Monitoring integrity of reports to ensure they include detailed, quality narratives.

- (6) Ensuring all required FAPIIS reporting is completed on time and reported to the DEPOC as required in Section 42.15.1.5.2 below.
- (7) Working with the acquiring office's leadership to ensure Contracting Officer Representatives (CORs) and/or other end users provide quality input for the reports.

(d) Focal points and alternates are responsible for the following:

- (1) Ensuring all required contracts/orders are registered within 30 days of award. This includes assignment of the assessing official, assessing official's representative and the contractor's representative. The focal point shall utilize the Auto Register Report in CPARS to register all contracts unless there is a compelling reason to manually register a contract.
- (2) Monitoring overdue CPARS and working with all parties involved to ensure timely completion.
- (3) If required by the DD/RAM, assisting with monitoring the quality of evaluations to ensure accurate and complete narratives are provided.
- (4) Assisting users with the CPARS system, as necessary.
- (5) Review metrics posted on the OMS Sharepoint site.
- (6) All Focal Points and alternate Focal Points must attend the following online training sessions which are provided by the Naval Sea Logistics Center. Registration information can be found on the CPARS website under "[Training](#)."
 - (A) CPARS Overview
 - (B) Focal Point and Agency POC Auto Register Functions
 - (C) FAPIIS Overview
 - (D) Quality and Narrative Writing (This class is only necessary if the Focal Point/alternate is required by the DD or RAM to assist with monitoring the quality of report narratives.)

(e) At EPA, the Assessing Official (AO) shall be the contracting officer. The AOs responsibilities include the following:

- (1) Coordinating with the Focal Point to ensure all contracts/orders are registered with complete information within 30 days of award.
- (2) Coordinating with Assessing Official's Representative (AOR) to ensure timely receipt of the AOR's input.
- (3) Ensuring all reports include detailed, accurate narratives that support the ratings given.
- (4) When transitioning a contract to another contracting officer or assigning a new COR, notify the Focal Point to update the AO and AOR information in the system. Additionally, include a transition memo in the official contract file with a summary of the contractor's performance to date which can be used in the subsequent evaluation.
- (5) Attend/take online the following training sessions which are

provided by the Naval Sea Logistics Center. Registration information can be found on the CPARS website under “[Training](#).”

- (A) CPARS Overview
- (B) FAPIIS Overview
- (C) Quality and Narrative Writing

- (f) The contracting officer should decide who to assign as an AOR based on the individual circumstances of each contract. For example, in the case of an Agency-wide contract with performance in multiple locations with multiple CORs, the contracting officer may decide to assign multiple AORs. In the case of a onetime supply contract with no COR, it might be easier for the AO to not assign an AOR and instead input the assessment after obtaining input from the end user. However, in all cases, the contracting officer shall seek input from technical personnel and/or the end user. When assigned, AOR responsibilities above and beyond those in the Guide include the following:

(1) Attend/take online the following training sessions which are provided by the Naval Sea Logistics Center. Registration information can be found on the CPARS website under “[Training](#).”

- (A) CPARS Overview
- (B) Quality and Narrative Writing

- (g) The Reviewing Official (RO) provides a checks and balance when there is a disagreement between the AO and the contractor. At EPA, the RO shall be the Branch Chief or the Regional Acquisition Manager.

42.15.1.5.2 FAPIIS Reporting.

FAR 9.105 and 42.1503(h) require contracting officers to report certain actions such as non-responsibility determinations, determinations of defective cost and pricing, and terminations for cause and default into the FAPIIS module of CPARS within 3 calendar days. Documents that must be reported include the following:

- Non-Responsibility Determination (FAR 9.105)
- Termination for Default (FAR 42.1503(h))
- Termination for Cause (FAR 42.1503(h))
- Defective Pricing (FAR 42.1503(h))
- Administrative Agreements (FAR 9.406-3(f)(1) & 9.407-3(e)(1))

It is EPA’s policy that immediately upon reporting any of the above information to the FAPIIS module, the contracting officer shall send an email to the DEPOC through the Acquisition Policy mailbox at: OMS-ARM-OAS-AcquisitionPolicy@epa.gov with the subject line “Attn: DEPOC – FAPIIS Reporting” and with the contract number and the information reported in the body of the email.

42.15.1.5.3 Prioritizing Reports

Contractor performance evaluations shall be completed for all applicable contracts and orders that meet the thresholds at FAR 42.1502. The CPARS Guide provides guidance regarding how to submit the various types of reports. For contracts less than one-year duration, a completed evaluation is due 120 days from contract completion. For multiple year contracts, a completed evaluation is due 485 days from the contract award date and every 365 days thereafter through contract completion. All reports must be completed in these timeframes; however, contracting officers shall prioritize the following:

- (a) High risk contract types, such as cost reimbursable or time and material;
- (b) Complex acquisitions, such as information technology support services, technical support services, operations support services, or site security services;
- (c) High dollar value or major acquisitions, regardless of contract type.

42.15.1.5.4 Evaluation Factors

FAR 42.1503(b)(2) includes a list of minimum evaluation factors that must be included in every evaluation. Under the category of “Quality of Product or Service” all EPA evaluations must include an evaluation of the contractor’s compliance with any sustainability requirements included in the contract. Example of contracts that typically have sustainability requirements include contracts for goods and services that utilize sustainable environmental practices, such as the acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products. For more information, see EPAAG Chapter 23.1.1.

42.15.1.5.5 Evaluation Ratings

FAR 42.1503 Table 42-1 provides a list of evaluation ratings and definitions for use in CPARS evaluations. Using these ratings will help standardize contractor ratings. Additionally, when FAR clause 52.219-9 Small Business Subcontracting Plan (as prescribed in 19.708(b)) is included in a contract, Table 42-2 provides evaluation ratings definitions for the small business subcontracting evaluation factor.

CHAPTER 44 – SUBCONTRACTING POLICIES AND PROCEDURES (May 2019)

Section 44.2 – Consent to Subcontracts

Section 44.2.1 - Required Practices Concerning Subcontracts

This section was previously Section 44.1 of the Contracts Management Manual.

44.2.1.1 Purpose.

The purpose of this subsection is to provide guidance on required procedures when consenting to subcontracts. This guidance addresses issues pertinent to both preaward and postaward subcontracts.

44.2.1.2 Background.

In response to an Office of Inspector General (OIG) audit of subcontract awards by EPA prime contractors and EPA's oversight of prime contractors' use and control of these subcontracts, the Office of Acquisition Solutions (OAS) agreed to issue guidance reminding Contracting Officers (COs) of required practices when consenting to subcontract. This guidance addresses issues pertinent to the preaward and postaward review of subcontracts.

Subcontracts represent a unique contractual instrument in which the Government has no direct legal relationship with subcontractors, sometimes referred to as no "privity of contract" (defined as that relationship which exists between two contracting parties). There is essentially no relationship between the Government and its subcontractors. The prime contractor is selected for its technical and management abilities, including the right to manage the contract and subcontractors used in the performance of the contract.

Prime contractors are responsible for planning, awarding, and administering subcontracts. However, COs play a key role in subcontract oversight, since they are responsible for the overall prime contract price and performance. COs are responsible for assessing the need for subcontracts, and the additional cost of subcontracting before granting consent. Before granting consent to a subcontract, COs review the adequacy of the prime contractor's cost and price analysis and determine whether the proposed subcontract costs are realistic for the work to be done.

Finally, this subsection addresses consenting to subcontracts. Specifically, this section clarifies and supersedes three practices identified in a June 8, 1994, OAS (formerly Office of Acquisition Management (OAM) memorandum concerning subcontracting: consenting by letter, ceilings, and increasing the estimated amount of subcontracts.

In addition, two other practices regarding subcontracting consent are discussed: the role of the Procuring Contracting Officer (PCO) and the Administrative Contracting Officer (ACO) in the consent process, and the review of the proposed subcontract document.

COs should refer to FAR Part 44 and this section of the EPAAG for policies and procedures before granting consent to subcontract.

This subsection was originally issued as a Procurement Policy Notice (PPN) 97-01 dated January 8, 1997, from Betty L. Bailey, Director of the Office of Acquisition Solutions (formerly OAM) to OAS Division Directors, Regional Contract Officer Supervisors, and Howard Corcoran, OGC, SUBJECT: Required Practices Concerning Subcontracts.

44.2.1.3 Authority/Applicability [Reserved].

44.2.1.4 Definitions [Reserved].

44.2.1.5 Policy.

44.2.1.5.1 Roles and Responsibilities

Before consenting to a subcontract, the CO reviews the request and supporting data and considers such factors as: technical need for services, compliance with the prime contract's goals for subcontracting with small disadvantaged business and women-owned business concerns, adequacy of competition, responsibility of the proposed subcontractor, proposed type and terms and conditions of the subcontract, and adequacy and reasonableness of cost or price analysis performed.

44.2.1.5.1.1

The Project Officer (PO) reviews the prime contractor's request for subcontract consent, and provides comments to the CO on the technical need and appropriateness of the supplies or services, the reasonableness of the subcontract estimate in terms of level of effort, and types and quantities of proposed other direct costs; location, duration, number of travelers and purpose of proposed travel; skill level, labor mix, and direct labor hours to be expended; and the capabilities of the proposed subcontractor.

(a) Review of Preaward Subcontracts

(1) Preaward Team Subcontractors

Preaward team subcontractors are competed as part of the original prime contractor's proposal, which is subject to the competitive evaluation process. During preaward competition, the technical capability and costs of each prime and its subcontract teams are evaluated as a combined entity, which is evaluated against other prime offerors' contract teams. Selection for award is based on the management abilities of the prime contractor, and the combined technical capabilities and price of the prime and its subcontract teams. The CO does not need to comply with FAR Subpart 44.2 at the time of contract award, since team subcontracts are competed for subcontract consent purposes as part of the contractor's proposal, which is subject to the competitive evaluation process prior to award.

(2) Collusive Team Arrangements

COs must be alert for restrictive bidding patterns where contractors may have agreements with other contractors not to compete or bid against each other for a prime contract to be awarded. In return, the contractor submitting a prime proposal may include other contractors as team subcontractors. For example, EPA contractors who are technically qualified to bid on the prime contract may choose to be proposed as a team subcontractor, perhaps at higher rates, and avoid the preparation of expensive prime proposals.

Restrictive competition reduces the Agency's assurance that it is obtaining the most technically qualified prime contractor at the best price to the Government. Whenever such an arrangement is suspected, it should be referred to the OIG, since such practices may be a violation of the Antitrust Act.

(b) Review of Postaward Subcontract

(1) Consent

In general, unless consent requirements are waived as a result of the approval of the contractor's purchasing system pursuant to FAR Subpart 44.3 or otherwise exempted under the applicable FAR subcontract clause, subcontracts awarded after prime contract award require CO consent, and are subject to the requirements of FAR Part 44, "Subcontracting Policies and Procedures."

(2) FAR 44.202-2 lists several factors the CO must review and evaluate before granting consent. Reviewing the proposed subcontract is necessary to assure the following:

- (i) Was adequate price competition obtained or its absence properly justified?
- (ii) Has the contractor performed adequate cost or price analysis?
- (iii) Is there a sound basis for selecting and determining the responsibility of a particular subcontractor?
- (iv) Does the subcontract contain required flow down clauses?

(3) Need For Subcontract

FAR 44.202-2 lists several factors the CO must review and evaluate before granting consent. Reviewing the proposed subcontract is necessary to assure the following:

- (i) Was adequate price competition obtained or its absence properly justified?
- (ii) Has the contractor performed adequate cost or price analysis?

(iii) Is there a sound basis for selecting and determining the responsibility of a particular subcontractor?

(iv) Does the subcontract contain required flow down clauses?

COs responsible for subcontract consent shall confirm with the PO on whether the technical skills provided by the subcontractor are needed, or are already provided under the contract by the prime or a team subcontractor. COs are responsible for reviewing the reasonableness of rates proposed by post-award subcontractors before granting consent to subcontract; prime contractors are accountable for performing cost or price analyses of proposed subcontractors.

(4) Competition

If included in the contract, prime contractors must adhere to FAR Clause 52.244-5, "Competition in Subcontracting," where the contractor shall select subcontractors on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

COs may only accept justifications for sole source awards if the prime contractor provides substantive evidence that no other responsible party exists, or there are circumstances of unusual and compelling urgency. Statements of uniqueness, including requirements for geographical location, site specific experience, or that the offerors are the only available source, are not an acceptable justification for sole source subcontracting unless adequate documentation is submitted by the prime contractor. In addition, EPA experience or incumbent contractor status rarely should qualify as uniqueness under such sole source awards, absent other supporting factors. Further, lack of planning is not an adequate justification for sole source awards. COs are encouraged to work with the PO to allow prime contractors sufficient time to compete post-award subcontracts, if the prime contractor chooses to subcontract.

(5) Subcontract Consent Documentation

COs may provide consent by letter for non-team subcontractors under any contract. For some contracts this is not administratively feasible to identify each subcontract in the contract. Because of the volume in Superfund contracts, for example, non-team subcontracts are usually consented to by letter.

COs are no longer required to identify subcontract ceiling amounts in contracts. Some COs instead set up an aggregate ceiling for all subcontracts, rather than identify a ceiling for each subcontract. This raised the broader question of the necessity of establishing subcontract ceilings in Agency subcontracts. Since the estimated amount of the subcontract is covered by the CO's consent, the identification of a ceiling is technically redundant.

COs may consent to increases in the estimated amount of subcontracts by letter or by contract modification.

However, there are circumstances where it may be appropriate for the PCO to forward the contract file to the ACO without taking action on the request for subcontract consent. In cases where action is not taken, the PCO shall annotate the file on the consent request. An example could be the unavailability

of an approved indirect cost rate for a subcontractor. Given the time incident to obtaining an audited rate, it would be more appropriate for the PCO to transfer the file to the ACO without taking further action. Another example is when the proposed subcontract will not be available for PCO review within a reasonable period of time after contract award. In such cases the PCO shall annotate the file as to why no action was taken on the consent request.

If practicable, the PCO should consent to team subcontractors. Having already evaluated the team subcontracts from a technical and financial standpoint, the PCO is clearly the most appropriate individual to provide or deny subcontract consent in the initial contract, if the proposed subcontract has been included in the proposal.

COs should not consent to subcontracts without reviewing the request and supporting data. The review of the subcontract is necessary to assure that the proposed rates, fee, and estimated cost or fixed price amount have been incorporated; the required flow down clauses have been included; and the payment terms are appropriate. Further, FAR 44.202-2 sets forth factors COs must consider before consenting to subcontracts, some of which require review of the subcontract itself.

(6) Directed Subcontracting

Government personnel are prohibited from directing prime contractors to contract with specific firms, or to assist a prime contractor in selecting subcontractors, or personnel to be used on a subcontract. The underlying reason is that prime contractors are selected, in part, for their management abilities, including subcontract selection and management. COs, with PO assistance, are required to review prime contractor consent requests, including the statement of work, for evidence of directed subcontracting and to decline consent where such evidence exists. If evidence exists of directed subcontracting, the CO is responsible for denying the prime contractor's request to subcontract.

(7) Checklist

To assist the CO in evaluating a subcontract consent request, a Subcontract Consent Review Checklist (Appendix 44.2.1-A) is provided. The checklist contains many issues the CO should consider before consenting to subcontract.

44.2.1.5.2 The Small Business-Mentor Protégé Program

The Small Business Mentor-Protégé Program is developed to stimulate the participation of Small Disadvantaged Businesses (SDBs) in EPA contracts. The Program is designed to foster long term relationships between large contractors and SDBs

(a) Prime contractors accepted into the Program as Mentors will provide technical and management assistance to Protégé subcontractors (SDBs). Protégé firms may only be SDBs. Support is not limited to subcontract activities under an Agency prime contract, but may cover all aspects of the Protégé firm's operations. By sharing their managerial and technical expertise, prime contractors will help SDBs develop the necessary expertise to compete successfully for prime and subcontract opportunities.

(b) Public Laws 95-507 and 100-656 require agencies to submit small business and small disadvantaged business contracting goals for the approval of the Small Business Administration.

(c) The Program offers prime contractors no financial incentives to participate. In fact, Mentor firms will not be reimbursed on a direct basis for costs incurred in fulfilling their agreements with Protégé firms. These agreements cover extra contractual assistance Mentor firms will provide to Protégé firms in areas such as accounting and marketing.

(d) Under FAR 44.202-2(a) (5), Contracting Officers are required to consider the adequacy of price competition in whether to consent to a subcontract. FAR 52.244-2(b) (2) requires contractors to document the competition obtained in requests for subcontract consent, while FAR 52.244-5 requires contractors to select subcontractors on a competitive basis to the maximum practical extent.

(e) If prime contractors were permitted to award non-competitive contracts up to \$1,000,000 to Protégé firms, the reduced administrative burden should provide an incentive for firms to apply for the Program.

(f) Permitting prime contractors to award non-competitive subcontracts under the program is consistent with FAR procedures for 8(a) contracts which permit Agencies to award non-competitive contracts up to \$3,000,000 for services and \$5,000,000 for supplies.

(g) The requirement for adequate price competition in FAR 44.202-2(a)(5) applies only to subcontracts in excess of \$1,000,000.

(h) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained. If the subcontract is awarded under the Mentor-Protégé Program and is \$1,000,000 or less, competition is not required.

APPENDIX 44.2.1-A
SUBCONTRACT CONSENT REVIEW CHECKLIST

Prime Contractor:-----Contract #-----
 Proposed Subcontractor: -----
 Type of Subcontract: -----
 Maximum Subcontract Value: -----
 Period of Performance: -----

Note: Subcontract consent may not be required depending on contract type and whether the contractor has an approved purchasing system. (See FAR Subparts 44.2 and 44.3)

<u>Areas of Consideration</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>Comments</u>
here				
Is the selection of the particular supplies, equipment, or services technically justified?				
Are the subcontractor skills needed?				
Are the rates proposed for subcontractors reasonable?				
Will the subcontractor assist the prime contractor in complying with its goals contained in the prime contractor's small business and small disadvantaged business subcontracting plan?				
Has the contractor obtained adequate price competition or justified its absence?				
Does the contractor have a sound, documented basis for selecting and determining the responsibility of the subcontractor?				

Did the contractor adequately assess and dispose of the subcontractor's alternate proposals, if offered?				
Is the proposed subcontract type appropriate for the risks involved and consistent with the FAR?				
Has the contractor performed adequate cost or price analysis, and obtained current cost or pricing data (if applicable), including the required certificates?				
Has adequate consideration been obtained for any proposed subcontract that will involve Government-furnished facilities not previously authorized in the contract?				
Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?				
Does the contractor comply with applicable cost accounting standards for awarding the subcontract?				
Is the subcontractor on GSA's List of Parties Excluded From Federal Procurement and Non-Procurement Programs?				
For a cost type subcontract, is the fee within the fee limitations set forth in FAR 16.301-3?				
Is the subcontract providing for payment of fee on a cost-plus percentage-of-cost basis?				
Is the decision to subcontract consistent with the contractor's approved make-or-buy program?				
Does the proposed subcontractor contain all required Representations and Certifications (either the FAR clause or the prime contractor's format)?				
Is the Statement of Work (SOW) for the proposed subcontract so restrictive as to limit competition?				

Does the SOW conform to requirements concerning personal services, inherently governmental functions, and prohibited services?				
General comments:				

Note: Additional comments may be included as an attachment to the checklist.

In accordance with this review, consent to award the subcontract is hereby recommended.

Recommend:

Contract Specialist: _____

Date: _____

Approved: _____

Contracting Officer: _____

Date: _____

Subsection 44.2.2 – Prohibition of Directed Subcontracting (April 2004)

This subsection was previously section 44.2 of the Contracts Management Manual.

44.2.2.1 Purpose.

The purpose of this subsection is to provide policy regarding subcontracting under EPA prime contracts as there is no contractual relationship exists between the Government and subcontractors (i.e., no “Privity of Contract”).

44.2.2.2 Background.

The prime contractor is paid by the Government to manage its subcontracts and cannot abrogate this responsibility. The Government cannot intervene or interfere in how the prime manages its subcontractor(s). Since EPA prime contractors have overall authority and responsibility for all contract work, including subcontract performance, no contractual relationship exists between the Government and subcontractors (i.e., no “Privity of Contract”).

44.2.2.3 Authority/Applicability.

The authority of this subsection is FAR Part 44 including FAR 44.202-2 and FAR 52.244-5.

44.2.2.4 Definitions.

- (a) Allowable Technical Direction - the clarification of ambiguous or uncertain technical requirements to ensure efficient and effective contractor performance within a contract’s SOW which includes: providing guidance of a general nature to the contractor necessary to perform the SOW; and commenting on and approving reports and other deliverables. Technical direction will be issued in writing or confirmed in writing within five (5) calendar days after verbal issuance.
- (b) Directed Subcontracting - the improper practice of requiring the prime contractor to use specific subcontractors, or the mere suggestion of a specific subcontractor or task, unless otherwise authorized in the contract, or by applicable Federal statutes, rules, and/or regulations.
- (c) Prime Contractor - the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.
- (d) Subcontractor - any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.
- (e) Team Subcontractor - a subcontractor that was either submitted by the prime contractor with the initial proposal and approved by the Contracting Officer in the award, or later became part of the team by specific written Contracting Officer approval. Subcontractors proposed after the initial award must be evaluated and approved as specified in FAR 44.202. Once approved, they are considered to be a “team subcontractor” and the prime contractor needs no further approval (contracts may have specific work plan approval procedures that must be followed) to propose and use the team subcontractor for that specific contract, work assignment, or delivery order.

- (f) Unallowable Technical Direction - the improper practice of: changing the terms and conditions agreed to in the contract, work assignment, or delivery order which includes, but is not limited to: increasing or decreasing the cost of the contract, work assignment or delivery order; adding or deleting work from a contract, work assignment or delivery order; changing the period of performance; creating an illegal contractual relationship such as a personal services situation; authorizing the contractor to start work prior to the Contracting Officer's issuance of the work assignment, delivery order or contract; requiring work be assigned directly to subcontractors/consultants; or stopping work or terminating the effort by the contractor.

44.2.2.5 Policy.

44.2.2.5.1 Roles and Responsibilities

The Contracting Officer (CO), before consenting to a subcontract, reviews the request and supporting data and considers all factors listed in FAR 44.202-2, including: whether the proposed subcontractor is on the debarred or suspended list; technical need for services; compliance with the prime contract's goals for subcontracting with small disadvantaged business and women-owned business concerns; adequacy of competition; responsibility of the proposed subcontractor; proposed type; terms and conditions of the subcontract; and adequacy and reasonableness of cost or price analysis performed.

The Project Officer (PO) reviews the prime contractor's request for subcontract consent and provides comments to the CO on the technical need and appropriateness of the supplies or services, the reasonableness of the subcontract estimate in terms of the level of effort, and types and quantities of proposed other direct costs; location, duration, number of travelers and purpose of proposed travel; skill level, labor mix, and direct labor hours to be expended; and the capabilities of the proposed subcontractor.

44.2.2.5.2 Policy Against Directed Subcontracting

Federal Acquisition Regulation (FAR) clause 52.244-5, Competition in Subcontracting (Dec 1996), requires subcontracts be awarded competitively, to the maximum extent practicable, for negotiated contracts above the simplified acquisition threshold. Directed subcontracting encroaches upon the prime contractor's responsibility to select and manage subcontractors.

Directed subcontracting undermines the competitive procurement process by denying the Government needed services at the highest quality and best price, which is achieved through competition.

In addition, directed subcontracting may create an improper personal services relationship between the Government and a contractor in violation of FAR 37.104.

44.2.2.5.3 Prohibited Actions

- (a) The Government's only direct contractual relationship is with the prime contractor. In addition to FAR 44.203, the following activities by Agency personnel involved in contract management

are prohibited:

- (b) Directing the prime contractor to subcontract with a specific firm. The mere suggestion of a particular firm is improper, unless otherwise authorized in the contract.
- (c) Directing that any portion of work should be performed by subcontracting, rather than the prime contractor, unless otherwise authorized in the contract.
- (d) Providing technical direction to a subcontractor without the knowledge of the prime contractor, unless otherwise authorized in the contract.
- (e) Directly monitoring a subcontractor's technical performance and financial expenditures to the exclusion of the prime contractor. Any technical or financial subcontract problem shall be brought to the attention of the prime contractor, who is responsible for subcontract oversight, and documented in the contract file.
- (f) Directing the contractor to subcontract beyond the available appropriation or the end of the contract period of performance.

CHAPTER 45 – GOVERNMENT PROPERTY

Section 45.1 - General

Subsection 45.1.1 - Providing Government Property under EPA Contracts (May 2019)

45.1.1.1 Purpose.

The purpose of this subsection is to provide uniform policies, procedures, and guidance to EPA personnel involved in providing Government Property and accomplishing contract property administration.

45.1.1.2 Background.

The Federal Acquisition Regulation (FAR) allows the government to provide government property for contract performance, gives contracting officers more flexibility in their determination to provide property, and renders the class deviations for government property. The objective of this chapter is to provide guidance to Contracting Officers (CO) to attain efficient, effective, economic, and uniform management of Government property required for the performance of EPA contracts. It addresses the roles and responsibilities of the CO, Contracting Officer Representatives (COR), Contract Property Coordinator (CPC), Property Utilization Officers (PUO), and Fleet Managers responsible for providing, administering and disposing of Government property required for contract performance.

45.1.1.3 Authority/Applicability.

This policy is in accordance with the FAR Part 45 - Government Property.

45.1.1.4 Definitions.

(a) Government Property Analysis Worksheet (GPAW). This worksheet is used by the CO, COR and PUO to determine if a contractor's request for Government Property is in accordance with FAR Part 45 and the following agency guidelines. The GPAW is located in Appendix 45.1.1-C.

(b) Property Utilization Officer (PUO). The PUO promotes the acquisition and efficient use of EPA inventory by certifying whether or not like item(s) exist in section C of the GPAW. View the PUO list at: <http://intranet.epa.gov/oa/fmsd/property/prog-contacts.htm>.

(c) Contract Property Coordinator (CPC). The CPC administers contract requirements relating to contract property, provides technical expertise and assistance relative to

contract property to the CO and COR, and makes recommendations to update Agency policies and procedures for FAR compliance. The CPC is assigned to the Facilities Management and Services Division (FMSD).

(d) Fleet Manager(s). The Fleet Manager is assigned to the Facilities Management and Service Division (FMSD). Fleet managers are responsible for ensuring that the acquisition, operation and disposal of motor vehicles comply with governing laws and regulations.

(e) Non-Passenger Motor Vehicles. These vehicles are ones that have been acquired and are being used for special purposes other than carrying passengers. EPA may purchase and lease non-passenger motor vehicles.

(f) Passenger Motor Vehicles. These vehicles are acquired for carrying passengers, such as sedans, passenger vans, and buses. Congress has only given EPA the authority to lease (See EPAAG 31.2 for leasing procedures), but not, purchase passenger motor vehicles. (U.S. Code 31 §1343 and 40 §419)

(g) Green Fleets. For information on alternative fuels and selecting the most fuel efficient vehicles, visit the “Greening EPA” at <https://www.epa.gov/greeningepa> .

45.1.1.5 Procedures for Providing Property

45.1.1.5.1 CO Responsibilities

The CO is responsible for reviewing the contractor OR the program office request and making the determination to provide Government Property. The program office should perform a thorough analysis of the contract requirements to ensure that the request is valid. The CO may submit individual or class deviations, for instances not covered by FAR exceptions or EPA class deviations, for review by Acquisition Policy and Training Branch (APTb) and approval by the Head of the Contracting Agency (See EPAAG Chapter 1 for approval levels). The decision charts located in Appendix 45.1.1-A and 45.1.1-B describe the process for each type of request; and the responsibilities of Agency personnel involved in the determination of whether or not to provide government property. The CO shall:

- (a) Perform an initial cursory review of the request for property and verify the request meets the FAR Subpart 45.102 and EPAAR 1552.245-70 requirements;
- (b) Ensure that the procurement requirements for acquisition of property have been met;
- (c) Forward the contractor’s request and GPAW to the COR;
- (d) Return any requests that are incomplete;
- (e) Attach documentation to the GPAW, which fully supports the decision to approve or disapprove the request;
- (f) Conduct a cost analysis on contractor lease/purchase vs. Government lease/purchase;

- (g) Ensure that all property is added via a modification to the contract;
- (h) Provide written direction to the contractor, with copy to PUO authorizing use of existing Government property, OR allow for contractor acquisition in writing, OR reject contractor or program office request in writing stating reason(s);
- (i) Prepare a determination and finding (D&F) in accordance with FAR 1.704;
- (j) Complete an evaluation of the contractor's choice to lease or purchase the property, if the government disapproves the request;
- (k) Make final decisions regarding contract property discrepancies; and
- (l) Maintain the official contract files through contract closeout.

45.1.1.5.2 COR Responsibilities

- (a) Work with the Contracting Officer to evaluate the effect that furnishing property has on contract price;
- (b) Verify the technical requirement for the property;
- (c) Obtain PUO certification that requested or suitable like items are not available from EPA inventory;
- (d) Review the contractor's request to make sure the request does not exceed the minimum requirements for performance under the contract;
- (e) Determine whether or not the quantity requested is essential for contract performance;
- (f) Notify the CO if property is available and promptly return the GPAW;
- (g) Complete the GPAW and forward the original to the CO, if the request for government property is initiated by the Program office;
- (h) Request PUO certification that Contract Acquired Property (CAP) item is not part of in-house inventory.

45.1.1.5.3 PUO Responsibilities

- (a) Ensure that property is used to the maximum extent possible throughout the Accountable Area (AA);
- (b) Shall verify no like item(s) exist in EPA inventory which may be utilized.

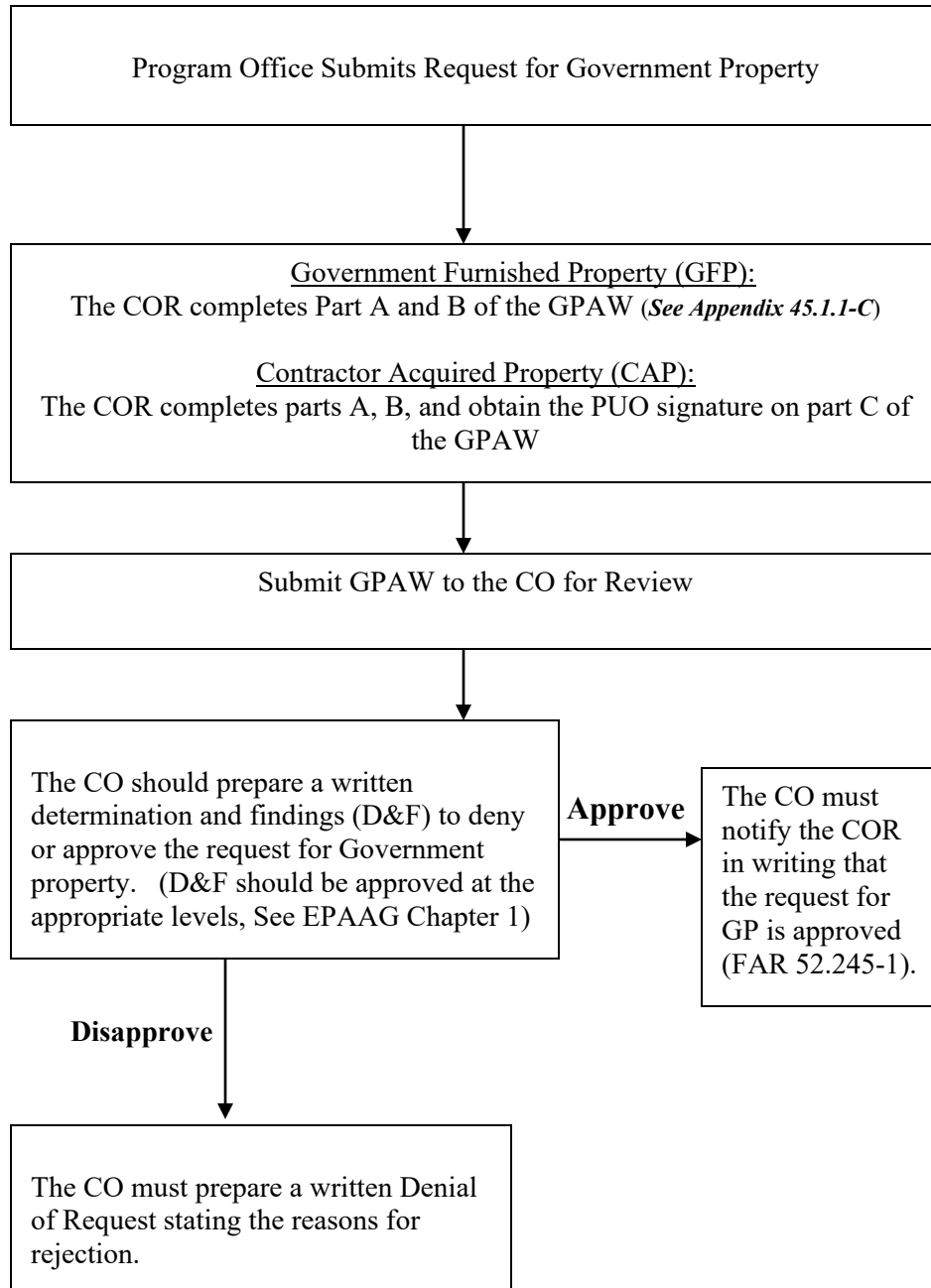
45.1.1.5.4 Regional/ Office/Program Fleet Manager Responsibilities

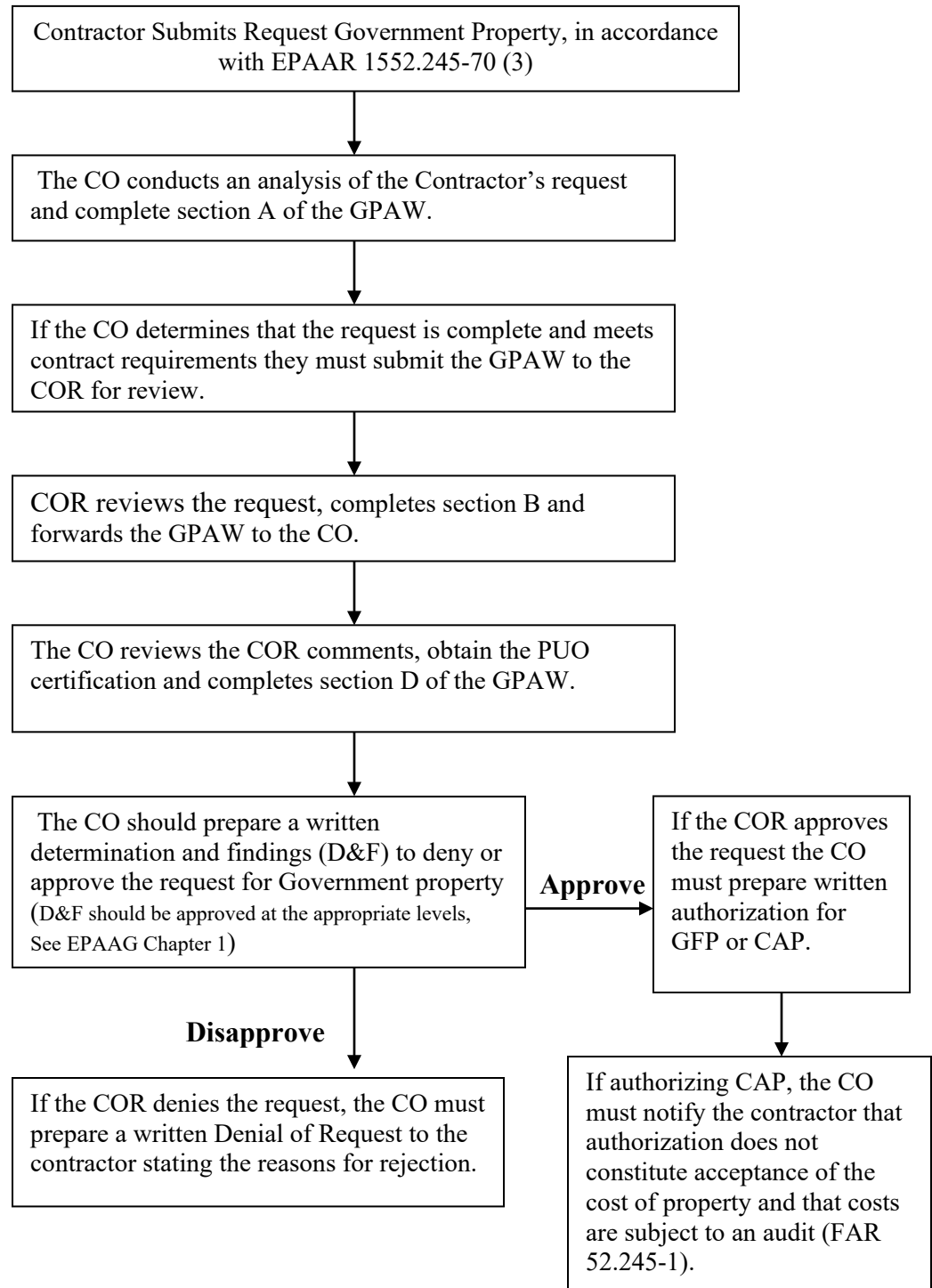
- (a) Determine if the property request is in accordance with federal environmental standards, , FAR Subpart 8.11, and meets General Service Administration (GSA) and Department of Energy reporting requirements.
- (b) Determine the best method for acquiring *non-passenger motor vehicles* by conducting a purchase/lease cost analysis.
- (c) Determine which source to purchase/lease *non-passenger motor vehicles* or which source to lease *passenger motor vehicles* from including:
 - GSA Fleet,
 - GSA Multiple Award Schedule (MAS) contracts under Federal Supply Schedule (FSS) 751, or
 - Commercial source.

- (d) Provide guidance to the CO, COR, and contractor on motor vehicle statutory guidance and regulations.
- (e) Implement the procedures and methods contained in this Guide for surplus automotive equipment transfer and disposal.

45.1.1.5.5 Regional Fleet Manager/Office Fleet Manager/Program Fleet Manager

Coordinate with GSA regional and local offices for the use of temporary vehicles and related services, including plans for anticipated changes in requirements for GSA. Submit copies of regional fleet reports to the CPC and Agency Fleet Manager.

Appendix 45.1.1-A**PRE-SOLICITATION AND PRE-AWARD**

Appendix 45.1.1-B**PRE-AWARD AND POST AWARD**

Appendix 45.1.1-C

GOVERNMENT PROPERTY ANALYSIS WORKSHEET

Contractor: _____ Contract No: _____ Date of Request: ____/____/____

A. Contracting Officer Analysis (Contractor Request)

OR

Contracting Officer Representative Analysis (Program Office's Request)

- | | | |
|---|-----|-------|
| 1. Is the property required as a direct component in the construction of a Superfund remedial action which is being specifically designed and constructed in accordance with an EPA requirement? | Yes | No |
| 2. Does the request address all elements below: | Yes | No |
| <ul style="list-style-type: none"> a) It is in the Government's best interest; b) The overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal; c) Providing the property does not substantially increase the Government's assumption of risk; and d) Government requirements cannot otherwise be met. | | |
| 3. Has the contractor submitted a complete request for Government Property? <i>(Refer to the list below as a basis for your answer)</i> | Yes | No |
| <ul style="list-style-type: none"> • An item(s) description, quantity and estimated cost. • Certification that no like contractor property exists which could be utilized. • A detailed description of the task-related purpose of the property. • An explanation of the negative impact that would occur if the property is not provided by the Government. | | |
| 4. If applicable, is the Contractor's property management system in accordance with industrial leading standards? | Yes | No NA |
| 5. Has the Agency ever withdrawn approval of the contractor's property management system? | Yes | No NA |
| 6. If the request is for a motor vehicle check with the Fleet Manager located in Facilities Management Services Division (FMSD) to ensure that it is in accordance with statutory guidelines (See EPAAG 45.1.1.5.1.4 for more information on Fleet Managers) | Yes | No NA |

B. Contracting Officer Representative Endorsement

1. I have reviewed the request and determined that the request for property does not exceed the minimum contract requirements, that the purchase lease is necessary to achieve contract objectives and that the quantity is reasonable. (If you do not concur, please attach explanation.) Yes No

2. Existing property is available to fulfill this request. Yes No

Contracting Officer's Representative _____ Date _____

C. Property Utilization Officer Certification

There is no like item(s) in EPA's in-house inventory which may be used. (If like items exist, please attach explanation.)

Property Utilization Officer _____ Date _____

D. Contracting Officer Final Determination *(Select one of the following conclusions (check one)).*

The conclusion is supported by attachments to this form, i.e., cost analysis, narrative rationale.

1. As supported by A, B, and C, above, and the attached analysis:

_____ a. It is my determination that it is in EPA's best interest to provide Government Property (GP) to the contractor.

_____ b. It is my determination that it is in EPA's best interest to authorize the contractor to acquire property on behalf of the Government.

_____ c. It is my determination to deny _____ program's request / _____ contractor's request.

2. Other: _____

Contracting Officer _____ Date _____

Subsection 45.1.2 - Property Administration (February 2013)

This subsection was previously Section 45.2 of the Contracts Management Manual.

45.1.2.1 Purpose.

The purpose of this section is to provide guidance and procedures for EPA personnel involved in property administration.

45.1.2.2 Background.

Administration ensures that all government property in both the contractor's and its subcontractor's possession is controlled, protected, maintained, used and reported in accordance with regulatory and contractual requirements.

45.1.2.3 Authority/Applicability.

This policy is in accordance with FAR Part 45, Government Property.

This section is applicable for Contracting Officers, Contracting Officer Representatives, and the Contract Property Coordinators.

45.1.2.4 Definitions.

(a) Property Management System Analysis - Performed by the CPC to determine if the contractor property management system complies with the FAR and contractual requirements.

(b) Defense Contract Management Agency (DCMA) - DCMA is a Federal agency which provides property administration services for contracts. At EPA property administration functions for contracts are automatically delegated to the CPC. However, the CPC may re-delegate those functions to DCMA, under the existing Interagency Agreement.

45.1.2.5 Policy.

Procedures for delegation of property administration, monitoring contractor property management systems, and safe-keeping of audit records shall be developed and maintained.

45.1.2.6 Procedures.

45.1.2.6.1 CO Responsibilities.

- (a) Modify the contract when adding, transferring or disposing of government-property;
- (b) Submit electronic copies of all contracts, modifications, purchase orders, and

Federal Supply Schedule (FSS) orders that include the Government property clauses to the CPC;

- (c) Include a copy of the property report in the contract file;
- (d) Resolve property related issues in accordance with established EPA procedures in conjunction with the CPC;
- (e) Notify the contractor, in writing, that the CPC audit discovered deficiencies in its property management system; and that correction is needed to comply with contractual requirements. The notice shall include remedies as allowed in FAR 45.105 (b). The CPC will verify whether or not the corrections have been completed. If the system deficiency(s) are not corrected the CPC will notify the CO, as stated in 45.1.2.6.2 (f).
- (f) Report untimely or unsatisfactory performance by DCMA to the CPC.

45.1.2.6.2 CPC Responsibilities

All EPA contracts issued with Government Property, or those which include the Government Property clauses and have the potential to receive, purchase or acquire Government Property are automatically delegated to the EPA CPC for property administration. The delegation gives the CPC authorization to:

- (a) Perform a property risk assessment to determine if property functions will remain with EPA or re-delegate to DCMA;
- (b) Re-delegate property functions to DCMA, as needed. If the CPC re-delegates property functions to DCMA, the CPC must:
 - Prepare an “EPA Letter of Delegation for Partial Contract Administration”.
 - Submit the Letter of Delegation to DCMA with a copy of the contract.
 - Forward a copy of the delegation to the Administrative CO.
- (c) Provide technical expertise and guidance to the CO, COR, and contractor personnel.
- (d) Maintain accurate records of Government Property audits.
- (e) Perform a property management system analysis; and provide a written notification to the contractor of the analysis results including:
 - the system status (compliant, non-compliant);
 - the stated reason(s) for non-compliance;
 - a request to correct deficiencies; and
 - the completion schedule.
- (f) Notify the CO if the system deficiencies are not corrected.
- (g) Obtain property reports and annual physical inventory reports. The property reporting period is October 1st through September 30th of each year. The reports must be submitted at the end of each fiscal year, and upon contract expiration or termination. In addition to the reports requirements of FAR 52.245-1 (f)(vi), the reports shall contain the elements in Appendix 45.1.2-A. The CPC review all property and physical reports to ensure that the reports represent an accurate and complete accounting of contractor held government property. Information contained on these reports is used to provide Financial Information to the OCFO

- for the Agency's financial statement.
- (h) Investigate Loss, damage or destruction, or theft (LDDT) property contained on the reports and determine the corrective action needed.
 - (i) Forward the final EPA Property Report and working file to the CO when the contract expires or terminates.
 - (j) Resolve any concerns with DCMA performance as the COR and point of contact for the IA with DCMA. As such, the CPC will address any concerns with DCMA performance.

APPENDIX 45.1.2-A

Government Property Reports

In addition to the property reports requirement of FAR 52.245-1(f)(vi), the contractor is required to maintain, and report the following data elements, if applicable for EPA Government property (all elements are not applicable to material):

Name and address of the administrative Contracting Officer

Name of the contractor representative

Business type

Name and address of the contract property coordinator

Superfund (Yes/No)

Number of Subcontractor/Alternate Locations

For Land, Other Real Property, Facilities, Special Test Equipment, Special Tooling, Agency Peculiar and Material provide the property classification, balance at the beginning and end of the period (in dollars and units), and additions and deletions (in dollars).

LAND

OTHER REAL PROPERTY

FACILITIES

1. Items costing \$25,000 or more:
2. Items costing less than \$25,000:

SPECIAL TEST EQUIPMENT

1. Items costing \$25,000 or more:
2. Items costing less than \$25,000:

SPECIAL TOOLING

1. Items costing \$25,000 or more:
2. Items costing less than \$25,000:

AGENCY PECULIAR- including construction equipment and vehicles

1. Items costing \$25,000 or more:
2. Items costing under \$25,000:

MATERIAL

DEFERRED MAINTENANCE, IF APPLICABLE

NOTE: For items comprising a system, which is defined as "a group of interacting items functioning as a complex whole," the contractor may maintain the record as a system, noting all components of the system under the main component, or as individual records. If maintained as individual records, the record should indicate the system name for that item. However, for the Annual Report of Government Property, the components must be reported as a system with one total dollar amount for the system if that system total is \$25,000 or more.

Section 45.6 – Reporting, Reutilization, and Disposal

Subsection 45.6.1 - Property Disposal (February 2013)

This subsection was previously Section 45.3 of the Contracts Management Manual.

45.6.1.1 Purpose.

The purpose of this section is to provide guidance to EPA personnel involved in the process of property disposal.

45.6.1.2 Background.

Disposal of government property can occur under the following circumstances:

- (a) Contract completion;
- (b) Termination of the contract for default or convenience of EPA; or
- (c) When the property is no longer serviceable or needed for contract performance.

45.6.1.3 Authority/Applicability.

This policy is in accordance with FAR Subpart 45.6 Reporting, Reutilization, and Disposal.

This section is applicable for Contracting Officers, Contracting Officer Representatives, Contract Property Coordinators, Property Administrators, Fleet Managers, and the Property Utilization Officers.

45.6.1.4 Definitions.

(a) Plant Clearance Officer (PLCO). The employee delegated responsibility to dispose of EPA property on behalf of the CO if property administration has been re-delegated by the EPA CPC. Depending on the complexity, the CPC can redelegate it to DCMA.

(b) Disposal. Action taken to physically transfer property from one's accountability.

(c) Standard Form 1428, Inventory Disposal Schedule. The form is located at <http://www.arnet.gov/far/current/html/FormsStandard54.html>

(d) Surplus Property. Property under the control of any federal agency that is not required for that agency's needs, as determined by the head of the agency or designee.

(e) Hazardous Material: Includes any material defined as hazardous under the latest version of Federal Standard No. 313, including revisions adopted during the term of the contract. FED-STD 313 indicates that an item or chemical is hazardous if it falls within one of the following four categories:

- (1) Health or physical hazard regulated by OSHA in accordance with 29 CFR

1910.1200.

- (2) Environmental hazard regulated by the U.S. Environment Protection Agency (EPA) in accordance with 40 CFR 302 and 40 CFR 372.
- (3) Environmental hazard regulated by the Department of Transportation in accordance with 49 CFR 100-180 or other organizations which poses a risk to public safety when transported or moved.
- (4) Special nuclear source, by-product material, or radioactive material subject to the regulations of the Department of Energy in accordance with 10 CFR or by other organizations.

(f) Loss, Damage, Destruction or Theft (LDDT). Property that is identified and classified as lost, stolen, damaged or destroyed under EPA contracts.

(g) Plant Clearance Automated Reutilization Screening System (PCARSS). DCMA database used to track the reporting, screening, requisitioning and disposal of surplus Government property.

45.6.1.5 Policy.

Method(s) used to record, transfer, and report the disposal of Government property shall be developed and maintained.

45.6.1.5.1 Procedures

45.6.1.5.1.1 CO Responsibilities

- (a) Issue a modification to remove property from contract;
- (b) Credit contract or Superfund trust account:
 - (1) If the SF 1428 inventory list contains Superfund property for transfer, credit the contract at fair market value, unless it will be used wholly or partially for Superfund purposes.
 - (2) If the contract cannot be credited, funds must be credited to the Superfund trust account.
- (c) Receive closed property files as supporting documentation for the contract file.

45.6.1.5.1.2 CPC Responsibilities

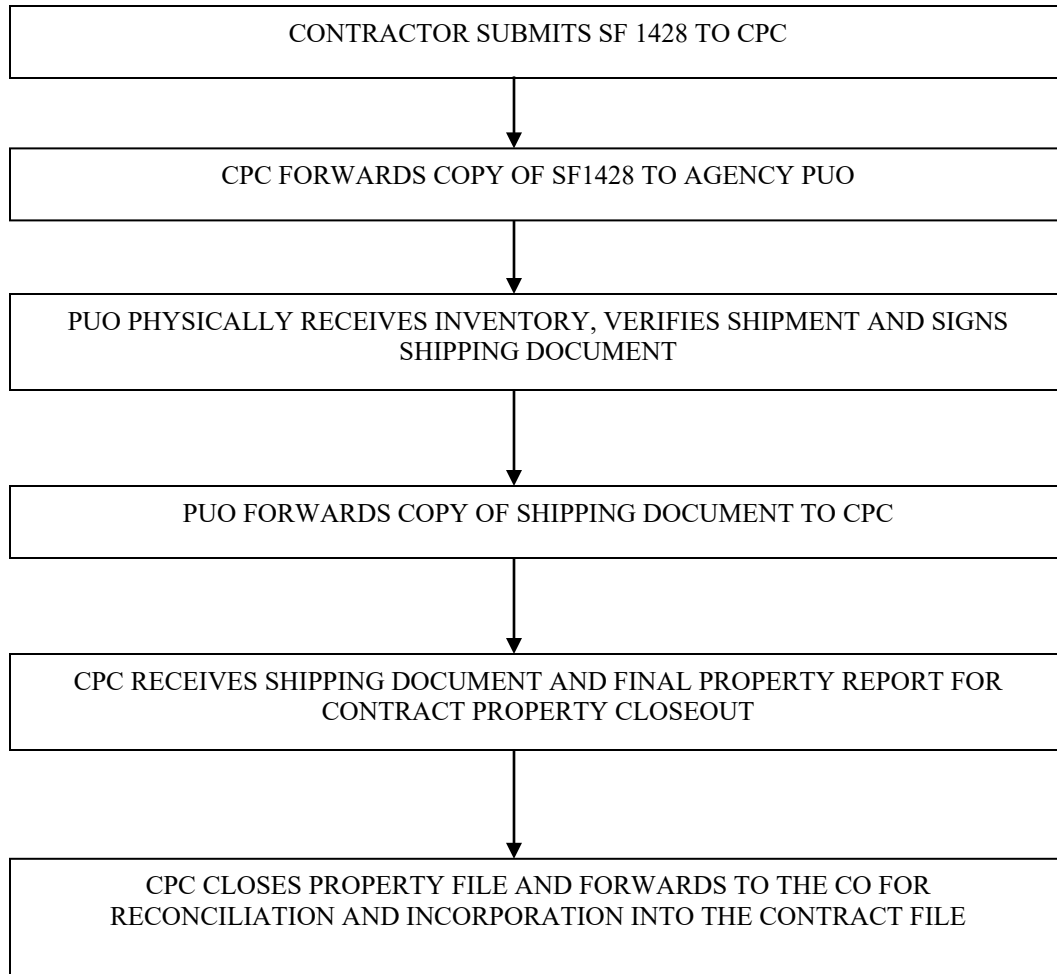
- (a) Receive SF1428 from contractor;
- (b) Forward copy of SF1428 to PUO;
- (c) Receive copy of shipping document from PUO, which show items returned from contractor;
- (d) Receive Final EPA Property report from contractor; and
- (e) Close the property file and submit to the CO.

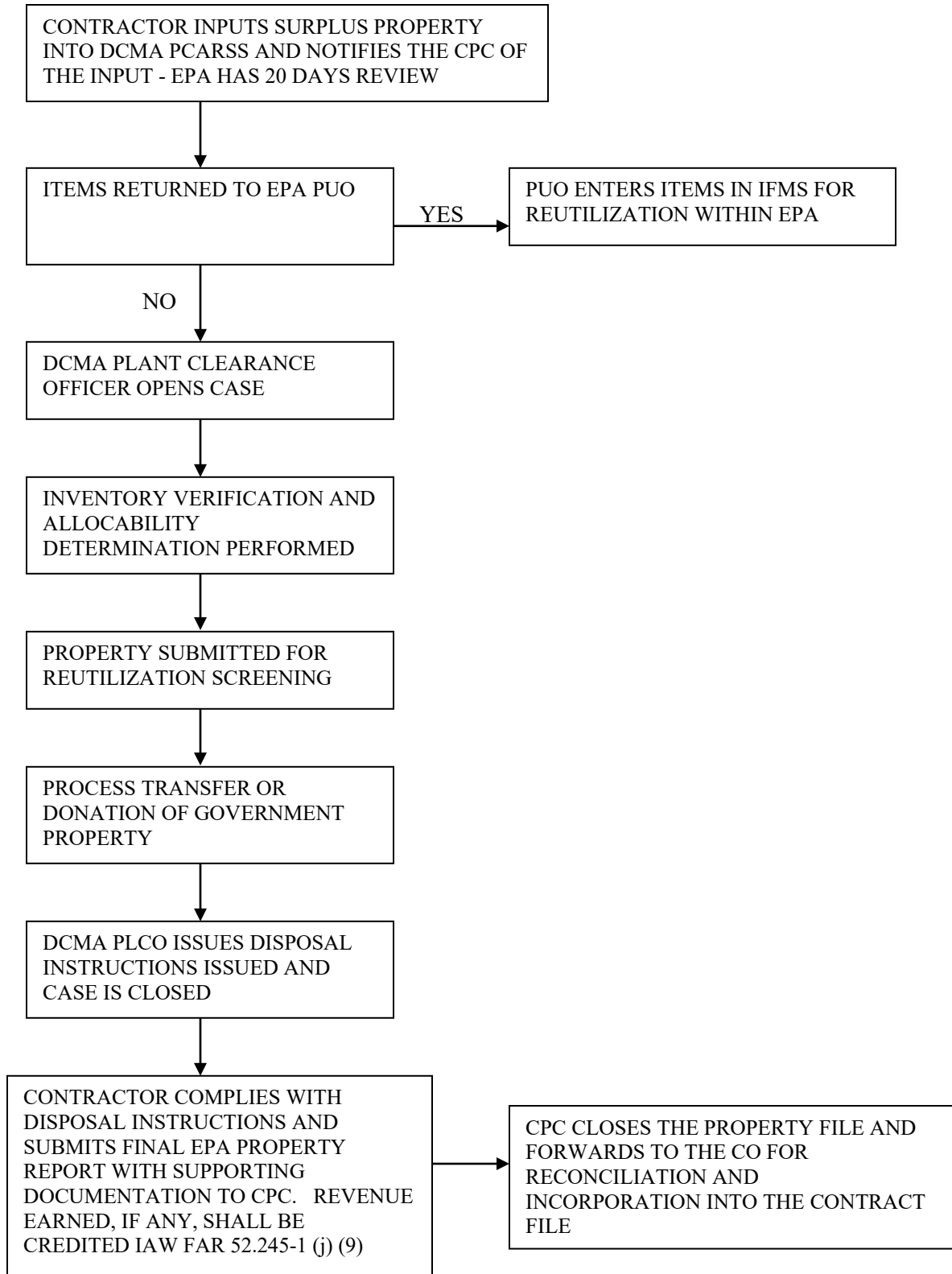
45.6.1.5.1.3 PUO Responsibilities

- (a) Receive copy of the SF1428 from CPC;
- (b) Receives the shipment, verify the inventory, and sign shipping documents;
- (c) Forward a copy of the shipping document to the CPC; and
- (d) Enter items into IFMS for reutilization within EPA.

Appendix 45.6.1-A

DISPOSAL OF GOVERNMENT PROPERTY NOT DELEGATED TO DCMA



Appendix 45.6.1-B**DISPOSAL OF GOVERNMENT PROPERTY DELEGATED TO DCMA**

CHAPTER 46 – QUALITY ASSURANCE

Section 46.2 – Contract Quality Requirements

Subsection 46.2.1 - Guidance for Use of Higher-Level Contract Quality Requirements in Acquisitions (November 2018)

46.2.1.1 Purpose.

This subsection establishes guidance for program personnel and contracting officers (COs) regarding the evaluation of solicitations and contracts, including simplified acquisitions, for inclusion of higher-level contract quality requirements.

In addition, this subsection supplements the procedures and requirements contained in FAR 46.202-4 by providing instructions for the use of the Quality Assurance (QA) Review Form to document and communicate the quality assurance requirements for inclusion in FAR clause 52.246-11, *Higher-Level Contract Quality Requirement*. FAR clause 52.246-11 allows acceptable quality standards to be tailored to meet specific Agency needs.

As outlined in EPAAG 7.1.1.5.5.L.3, the QA Review Form listed in Appendix 46.2.1-D must be used to document whether or not higher-level contract quality requirements are necessary and, if so, which quality standards should be applied and included in solicitations and contracts for activities that involve the collection, generation, use, or reporting of environmental data, and/or the design, construction, and operation of environmental technologies.

46.2.1.2 Background.

For information on EPA's quality assurance requirements for the collection, generation, use or reporting of environmental data, see www2.epa.gov/quality; CIO Policy 2105.0, *Policy and Program Requirements for the Mandatory Agency-wide Quality System*; *American Society for Quality/American National Standards Institute E4, Quality Systems for Environmental Information and Environmental Technology Programs – Requirements with guidance for use* (ASQ/ANSI E4-2014); or contact the Quality Staff of the Office of Environmental Information.

46.2.1.3 Authority/Applicability.

This subsection draws its authority from and supplements FAR 46.202 and FAR clause 52.246-11. This subsection applies to all solicitations (sole source as well as competitive), awarded contracts (including simplified acquisitions), (i.e., task orders and delivery orders), that involve the collection, generation, use, or reporting of environmental data, and/or the design, construction, and operation of environmental technologies.

The contract-level Contracting Officer's Representative (COR), with approval from the QA Manager of the organization sponsoring the work, may use "Other" in Section III.b.1 of the QA Review Form in Appendix 46.2.1-D to specify how the government will ensure, before award, the ability of the contractor to provide adequate quality products and services.

See www2.epa.gov/quality/examples.html for examples of covered activities. This work is predominantly included in one of the following cost categories as set forth in the accounting and object classification structure:

25.05	Program Contracts
25.32	Research and Development Contracts
25.85/86	Administrative/Programmatic - Studies, Analyses and Evaluation Consulting Services

46.2.1.4 Definitions.

Environmental Data are any measurements or information that describe environmental processes, locations, or conditions; ecological or health effects and consequences; or the performance of environmental technology. For EPA, environmental data include information collected directly from measurements, produced from models, or compiled from other sources (i.e., existing or secondary data) such as data bases or the literature.

Environmental Technology is an all-inclusive term used to describe pollution control devices and systems, waste treatment processes and storage facilities, and site remediation technologies; and their components that may be utilized to remove pollutants or contaminants from or prevent them from entering the environment. Examples include wet scrubbers (air), soil washing (soil), granulated activated carbon unit (water), and filtration (air, water). Usually, this term applies to hardware-based systems; however, it also applies to methods or techniques used for pollution prevention, pollutant reduction, or containment of contamination to prevent further movement of the contaminants, such as capping, solidification or vitrification, and biological treatment.

Higher-level Quality Requirements are those that apply to complex or critical items, or when the technical requirements of the contract require control of such things as work operations, in-process controls, and inspection; or attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology. For EPA, this type of quality requirement will apply to the collection, generation, use, or reporting of environmental data; and the design, construction, or operation of environmental technologies. Other types of quality requirements, as defined by FAR Part 46, apply to commercial items and supplies and services below the simplified acquisition threshold.

46.2.1.5 Policy.

46.2.1.5.1 QA Review Form Requirements

The QA Review Form is used to ensure that quality requirements of FAR 46.202 and FAR clause 52.246-11 are communicated to the CO, and to ensure that EPA-specific requirements (defined in CIO Policy 2105.0 and CIO Procedure 2105-P-01-0) are met. The QA Review Form in Appendix 46.2.1-D, or other program-specific QA Review Form, must be completed for all solicitations, performance work statements, statements of work (PWS/SOW) for contracts/task orders/delivery orders, and modifications to existing task orders/delivery orders that involve a significant change to the PWS/SOW. Actions that do not affect the work performed by the contractor; e.g., incremental funding or time extensions, do not require a QA Review Form. If approved by the CO and the QA Manager, the QA Review Form is not required if technical direction as defined in EPAAR clause 1552.237-71, *Technical Direction*, is issued under a project specific task order (see Appendix

46.2.1-A, step 6).

EPA QA Managers may tailor the QA Review Form in Appendix 46.2.1-D and incorporate it into their Quality Management Plan after receiving approval from the Office of Environmental Information's Quality Staff. Section III.b of the QA Review Form in Appendix 46.2.1-D must be included in the tailored form in its entirety for solicitations, although options that are not used by an organization may be listed as "Not Applicable." If an organization does not tailor the form, then the QA Review Form provided in Appendix 46.2.1-D must be used for all solicitations and awarded contract actions, as applicable.

46.2.1.5.2 Technical Evaluation Requirements

If the QA Review Form indicates that quality requirements are applicable to a procurement, and:

- the potential value of the procurement exceeds \$650,000; or
- the estimate of the percentage of costs or level-of-effort allocated to activities requiring quality assurance requirements exceeds 15%; or
- procedures defined in the Agency-approved Quality Management Plan of the organization sponsoring the work apply;

than the quality documentation (i.e., the Quality Management Plan or equivalent documentation) must be required as part of the Technical Evaluation Criteria. The QA Manager, QA Officer, or authorized QA designee as defined in the Organization's Quality Management Plan, must: (1) assist the contract-level COR with development of the Technical Evaluation Criteria and any associated technical instructions for the solicitations, and (2) serve as a member of the Technical Evaluation Panel for the purpose of evaluating the QA aspects of the technical proposals. Program Offices must establish procedures for QA Officer review of proposals on procurements of \$650,000 or less.

46.2.1.5.3 Process

46.2.1.5.3.1 Directions for Contracting Officer's Representatives

Directions for Contracting Officer's Representatives (CORs) are contained in Appendix 46.2.1-A.

Before award of contract (solicitations): The CORs must use the directions in Appendix 46.2.1-A to identify the quality requirements necessary for the acquisition, complete the QA Review Form, and provide this information to the contracting officer.

After award of a contract: For each task order/delivery order, or significant modification to the PWS/SOW for existing task orders/delivery orders, the CORs must use the directions in Appendix 46.2.1-A to identify the quality requirements necessary, complete the QA Review Form, and incorporate the quality requirements into the PWS or SOW for the task order/delivery order.

46.2.1.5.3.2 Directions for Contracting Officers

Directions for contracting officers are contained in appendix 46.2.1-B.

Before award of contract (solicitations): The contracting officer must incorporate the quality requirements for the acquisition into the solicitation and contract using the QA Review Form provided by the COR, the directions provided in Appendix 46.2.1-B, and the tailored FAR clause contained in Appendix 46.2.1-C.

After award of a contract: The CO must use the directions in Appendix 46.2.1-B to ensure that quality requirements conform to the requirements of the contract.

APPENDIX 46.2.1-A

DIRECTIONS FOR CONTRACTING OFFICER'S REPRESENTATIVES

Before Award of Contract

STEP 1. Review the Performance Work Statement (PWS) or Statement of Work (SOW) with the QA Manager (or the appropriate QA personnel¹) to determine if QA requirements apply.

STEP 2. If QA requirements do not apply, complete Sections I, IIa, and IV of the QA Review Form in Appendix 46.2.1-D or an approved program specific form provided by your QA Manager. Steps 3-4 below do not apply.

If QA requirements do apply, determine what standards apply as allowed by your organization's Quality Management Plan (with the assistance of the QA Manager). Generally, ASQ/ANSI E4-2014 applies to the majority of EPA's work requiring higher-level contract quality requirements; however, standards other than ASQ/ANSI E4-2014 may apply depending on the nature of the work (for example, ISO 9001, ISO 17025, ANSI/ASME NQA-1, etc.). If standards other than ASQ/ANSI E4-2014 apply, identify (with the assistance of the QA Manager) what documentation is required to determine conformance to these standards.

STEP 3. Complete the QA Review Form in Appendix 46.2.1-D or an approved program specific form provided by your QA Manager and obtain a concurrence signature of the QA Manager as part of the acquisition package.

For each type of documentation selected in Section III.b of the QA Review Form, identify (with the assistance of the QA Manager) whether the documentation should be prepared in accordance with the standard EPA requirements [i.e., *EPA Requirements for Quality Management Plans (QA/R-2)* and *EPA Requirements for Quality Assurance Project Plans (QA/R-5)*] or whether other EPA-approved requirements will be used. The standard EPA requirements should be used unless the QA Manager agrees to use different requirements identified in your organization's approved Quality Management Plan.

¹Appropriate QA personnel are defined in each EPA organization's Agency approved Quality Management Plan. For simplicity, the use of the term QA Manager will refer to both the QA Manager and other approved QA personnel.

STEP 4. If the potential value of the procurement exceeds \$650,000, or the estimate of the percentage of costs or level-of-effort allocated to activities requiring quality requirements exceeds 15%, or procedures defined in the Agency-approved Quality Management Plan of the organization sponsoring the work apply, then the quality documentation (i.e., the Quality Management Plan or equivalent documentation) must be included as part of the Technical Evaluation Criteria. The QA Manager, QA Officer, or authorized QA designee as defined in the organization's approved Quality Management Plan, must: (1) assist the contract-level COR with development of the Technical Evaluation Criteria, and any associated technical instructions, for the solicitations, and (2) serve as a member of the Technical Evaluation Panel for the purpose of evaluating the QA aspects of the technical proposals.

After Award of Contract – CORs must perform these steps for each PWS or SOW under the contract.

STEP 5. Review the project and determine if it requires quality documentation (for example, a QA Project Plan). Incorporate the requirement to develop this documentation and to implement the EPA-approved documentation into the project's PWS or SOW. If the project will be based on previously prepared and current EPA-approved quality documentation², incorporate the requirement to implement this documentation into the project's PWS or SOW.

STEP 6. Complete a QA Review Form in Appendix 46.2.1-D or an approved program-specific form provided by your QA Manager for each project and attach it to the project's PWS or SOW (e.g., delivery order, task order). Obtain concurrence signature of the QA Manager.

²For policy on approval procedures and requirements for ensuring quality documentation is current, see Sections 5.2.1 and 5.2.2 of CIO 2105-P-01-0(May 2000) and your organization's Quality Management Plan.

APPENDIX 46.2.1-B

DIRECTIONS FOR CONTRACTING OFFICERS

- STEP 1: Review the QA Review Form provided by the COR.
- STEP 2: If the procurement requires higher-level quality assurance requirements as indicated in the QA Review Form, insert the tailored contract clause in Appendix 46.2.1-C into the solicitation, simplified acquisition, awarded contract, task order, delivery order as applicable.
- STEP 3: FAR 52.246-11 is a fill-in type clause. The table under paragraph (a) of the clause has already been filled-in with QA standard ASQ/ANSI E4. Contracting officers should review block III.a.2 of the QA Review Form to see if any other standards are identified. If so, list the standards (and any tailoring) on the table under paragraph (a) of the contract clause in Appendix 46.2.1-C.
- STEP 4: If any parts of Section III.b of the QA Review Form indicate that documentation is required, than include this information in the appropriate spaces provided in the tailored clause in Appendix 46.2.1-C.
- STEP 5: Incorporate all approved pre-award QA documentation submitted by the contractor into the contract. Note: EPA may require that the contractor revise the quality documentation after award of the contract, so please verify with the COR that the documentation has been approved before incorporating it into the contract.
- STEP 6: **After award of the contract,** review the QA Review Form and any quality assurance requirements and information provided by the COR for each PWS/SOW performed under the contract. Ensure that these requirements are consistent with the quality requirements of the contract.

APPENDIX 46.2.1-C

CONTRACTS CLAUSE AND TAILORING LANGUAGE

Do not incorporate the parenthetical instructions in brackets [] into the solicitation or awarded actions.

[Contracting officer (CO) incorporates the following language into all solicitations and contracts that require higher-level quality standards using the QA Review Form provided by the Contracting Officer's Representative (COR). Include any other quality standards identified by the COR on the QA Review Form.]

Higher-Level Contract Quality Requirement (FAR 52.246-11) (DEC 2014)

- (a) The Contractor shall comply with the higher-level quality standard(s) listed below.

	Title	Number	Date	Tailoring
	Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs	ASQ/ANSI E4		*See below.

- (b) The Contractor shall include applicable requirements of the higher-level quality standard(s) listed in paragraph (a) of this clause and the requirement to flow down such standards, as applicable, to lower-tier subcontracts in –

- (1) Any subcontract for critical and complex items (see 46.203(b) and (c)); or
- (2) When the technical requirements of a subcontract require –
 - (i) Control of such things as design, work operations, in-process control, testing, and inspection; or
 - (ii) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

*As authorized by FAR 52.246-11, the higher-level quality standard ASQ/ANSI E4 is tailored as follows:

The solicitation and awarded action require the Offeror/Contractor to demonstrate conformance

to ASQ/ANSI E4 by submitting the quality documentation described below.

The Offeror shall submit the following quality system documentation¹ :

Before Award Documentation

1. ☐ Documentation of an organization's Quality System. Developed in accordance with either ☐ R-2, and/or ☐ Other: _____
- ☐ Combined documentation of an organization's Quality System and application of QA and QC to the single project covered by the contract. Developed in accordance with either ☐ R-2 and R-5, or by ☐ Other: _____
2. ☐ Programmatic QA Project Plan. Developed in accordance with either ☐ R-5, or ☐ Other: _____
- ☐ Application of QA and QC activities to the single project covered by the contract. QA Project Plan developed in accordance with either ☐ R-5, or ☐ Other: _____
- ☐ Not applicable.

After Award Documentation

3. ☐ Documentation of an organization's Quality System. Developed in accordance with either ☐ R-2, and/or ☐ Other: _____
- ☐ Combined documentation of an organization's Quality System and application of QA and QC to the single project covered by the contract. Developed in accordance with either ☐ R-2 and R-5, and/or by ☐ Other: _____
- ☐ Not applicable.
4. ☐ Documentation of the application of QA and QC activities to applicable project(s). Developed in accordance with either ☐ R-5; and/or ☐ A supplement to the following Programmatic QA Project Plan; and/or ☐ Other: _____
- ☐ Programmatic QA Project Plan with supplements for each specific project. Developed in accordance with: _____
- ☐ Existing documentation of the application of QA and QC activities will be used: Either: ☐ Documentation developed pre-award; ☐ Documentation will be identified in individual performance work statements/statements of work; ☐ Documentation identified in Section _____ of the performance work statement/statement of work.

Pre-award Documentation: The Offeror shall submit the documentation identified above as “Before Award” as a separate and identifiable part of its technical proposal. This documentation shall be prepared in accordance with the requirements identified herein [R-2 refers to *EPA Requirements for Quality Management Plans* (EPA/240/B-01/002); R-5 refers to *EPA Requirements for QA Project Plans* (EPA/240/B-01/003)]. The Offeror shall describe its plan

for covering the costs associated with the required documentation. Work involving environmental data generation or use shall not commence until the Government has approved the documentation and incorporated it into the contract.

Post-award Documentation: The Contractor shall submit the quality system documentation identified above as “After Award” to the Contracting Officer’s Representative following issuance of applicable performance work statement/statement of work.

This documentation shall be prepared in accordance with the requirements identified herein [R-2 refers to *EPA Requirements for Quality Management Plans* (EPA/240/B-01/002); R-5 refers to *EPA Requirements for QA Project Plans* (EPA/240/B-01/003)]. The Contractor shall describe its plan for covering the costs associated with the required documentation and one iteration when required for approval.

The Government will review and return the quality documentation, with comments, and indicate approval or disapproval. If the quality documentation is not approved, the Contractor shall revise the documentation to address all comments, and shall submit the revised documentation to the Government for approval.

In addition, after award of the contract, the Contractor shall revise, when applicable, quality documentation submitted before award to address specific comments provided by EPA and submit the revised documentation to the Contracting Officer’s Representative.

After award of the contract, the Contractor shall also implement all quality documentation approved by the Government and specified under this contract.

¹QMP refers to a Quality Management Plan. Programmatic QA Project Plan refers to a QA Project Plan that would cover multiple projects with similar activities. R-2 refers to EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, 03/20/01) and R-5 refers to EPA Requirements for Quality Assurance Project Plans (QA/R-5) (EPA/240/B-01/003, 03/20/01) - copies of these documents are available at www.epa.gov/quality.

(End of Clause)

APPENDIX 46.2.1-D

U.S. EPA QUALITY ASSURANCE REVIEW FORM
FOR CONTRACT ACTIONS

I. General Information

a. Contract Type:

☐ Solicitation/Sole Source (RFP #: _____)

☐ Delivery Order/Task Order
(PWS/SOW #: _____ and Contract #: _____)

b. Descriptive Title: _____

c. Sponsoring Organization (e.g., Branch, Division, Office): _____

d. Project Duration: _____

e. Is this a new ☐ or continuation of an existing ☐ project? _____

II. Scope of Work *[For example activities, see www2.epa.gov/quality/examples.html.]*

a. Does the work involve:

Yes No

- The collection, generation, use and/or reporting of environmental data? ☐ ☐

(Environmental data are defined as any measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology. For EPA, environmental data include information collected directly from measurements, produced from models, and compiled from other sources such as data bases or the literature.)

- Design, construction, and/or operation of environmental technologies? ☐ ☐

- Development and/or use of models? ☐ ☐

- Other activities that need quality assurance or quality control requirements as identified in your organization's Quality Management Plan? ☐ ☐

If yes, list: _____

If all answers are No, skip Section III and complete Section IV.

- b. Estimate of percentage of costs or level-of-effort allocated to the activities identified above: _____ %.

III. Quality Related Requirements:

(Where applicable, reference a specific section of the performance work statement/statement of work)

a. For Solicitations Only (complete (b) – (f) below)

1. Insert the percentage, weight or value of technical evaluation criteria assigned to offeror's quality system documentation: _____

2. List any quality standards (from your organization's Quality Management Plan) that you will use in lieu of, or in addition to, *American Society for Quality/American National Standards Institute E4, Quality Systems for Environmental Information and Environmental Technology Programs – Requirements with guidance for use (ASQ/ANSI E4)*. These standards are:

 Title:
 Numbering:
 Date:
 Requirements (Tailoring):

- b. QA Documentation Options:** (For solicitations, complete items 1-4; for all actions other than solicitations complete items 3-4. All documentation specified under "Other" must be defined in your organization's Quality Management Plan and be consistent with requirements defined in CIO 2105-P-01-0. For items checked under #2, there must be adequate information in the PWS/SOW for the Offeror to develop this documentation.)

The Offeror shall submit the following quality system documentation¹ :

Before Award Documentation

1. ☐ Documentation of an organization's Quality System. Developed in accordance with either ☐ R-2, and/or ☐ Other: _____
- ☐ Combined documentation of an organization's Quality System and application of QA and QC to the single project covered by the contract. Developed in accordance with either ☐ R-2 and R-5, or by ☐ Other: _____
2. ☐ Programmatic QA Project Plan. Developed in accordance with either ☐ R-5, or ☐ Other: _____
- ☐ Application of QA and QC activities to the single project covered by the contract. QA Project Plan developed in accordance with either ☐ R-5, or ☐ Other: _____
- ☐ Not applicable.

After Award Documentation

3. ☐ Documentation of an organization's Quality System. Developed in accordance with either ☐ R-2, and/or ☐ Other: _____
- ☐ Combined documentation of an organization's Quality System and application of QA and QC to the single project covered by the contract. Developed in accordance with either ☐ R-2 and R-5, and/or by ☐ Other: _____
- ☐ Not applicable.
4. ☐ Documentation of the application of QA and QC activities to applicable project(s). Developed in accordance with either ☐ R-5; and/or ☐ A supplement to the following Programmatic QA Project Plan; and/or ☐ Other: _____
- ☐ Programmatic QA Project Plan with supplements for each specific project. Developed in accordance with: _____
- ☐ Existing documentation of the application of QA and QC activities will be used: Either:
- ☐ Documentation developed pre-award; ☐ Documentation will be identified in individual performance work statement/statement of work; ☐ Documentation identified in Section _____ of the performance work statement/statement of work.

¹QMP refers to a Quality Management Plan. Programmatic QA Project Plan refers to a QA Project Plan that would cover multiple projects with similar activities. R-2 refers to EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, 03/20/01) and R-5 refers to EPA Requirements for Quality Assurance Project Plans (QA/R-5) (EPA/240/B-01/003, 03/20/01) - copies of these documents are available at www.epa.gov/quality.

- c. **Reports:** Are quality reports or reports containing quality assurance information (for example, status of quality system implementation, review of a quality system, quality control data, etc.) required? ☐ **Yes** ☐ **No**

If yes, identify the required reports and the time frame for submission: _____

- d. **Assessments:** Select all quality assessments that will be performed either pre-award or post-award:

	Pre Award	Post Award
On-site evaluation of Offeror's/Contractor's facility		
Assessments of the Offeror's/Contractor's Quality System (e.g., quality system audits, management system reviews, etc.)		
Project-specific assessments (e.g., technical systems audits, surveillance, performance evaluations, data quality assessments, peer reviews, readiness reviews)		

For each assessment, specify type, date to perform, and who will perform it (if known): _____

- e. **Procedures to Update Documentation:** Identify any procedures/requirements for updating EPA-approved quality-related documentation: _____
- f. **Other Requirements:** Identify any other pertinent quality-related requirements (as identified in your organization's Quality Management Plan): _____

- IV. **The signatures below verify that the performance work statement/statement of work has been reviewed to ascertain if quality assurance or quality control activities are needed and that the appropriate quality requirements have been established.**

Contracting Officer's Representative Date

Quality Assurance Manager Date

CHAPTER 52 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Section 52.1 - Instructions for Using Provisions and Clauses

Subsection 52.1.1 – EPA Provision and Clause Numbering (September 2019)

52.1.1.1 Purpose.

The purpose of this subsection is to provide the clause numbering system for EPA Acquisition Guide ([EPAAG](#)) provisions and clauses in the EPA Acquisition System ([EAS](#)) clause database. The section also references [Subsection 1.3.2, Provision/Clause Clearance Review Process](#), which prescribes the process for adding or modifying EPAAG provisions and clauses.

52.1.1.2 Background.

The EAS clause database contains Federal Acquisition Regulation ([FAR](#)), Environmental Protection Agency Acquisition Regulation ([EPAAR](#)) and EPAAG provisions and clauses. [Section 52.2](#) provides the prescriptions and texts for EPAAG provisions and clauses in the [EAS](#) clause database.

52.1.1.3 Authority/Applicability.

This subsection is issued in accordance with [FAR 1.301\(a\)](#) and EPA Delegations Manual [Chapter 1-2](#).

52.1.1.4 Definitions [Reserved].

52.1.1.5 Policy.

(a) (1) Contracting officers shall use the EPAAG provisions and clauses in [EAS](#) in accordance with the corresponding prescriptions as applicable.

(2) EPAAG provisions and clauses will have the numbering format “EPA-*[UCF Section]* – *[FAR Part]* - 101,” 102, etc.; for example, *EPA-H-42-101*.

(b) Request for changes to an existing EPAAG provision or clause, or creation of a new EPAAG provision or clause, shall be processed in accordance with [Subsection 1.3.2, Provision/Clause Clearance Review Process](#).

CHAPTER 52 – SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Section 52.2 – Text of Provisions and Clauses (January 2017)

This section sets forth the text of all EPAAG provisions and clauses listed in EAS following the order of the Uniform Contract Format (UCF).

52.2.1 UCF Section A - Solicitation/Contract Form [Reserved].

52.2.2 UCF Section B - Supplies or Services and Prices.

EPA-B-16-101 Minimum and Maximum Amounts

Prescription: Insert the following clause (or one substantially the same) in indefinite delivery/indefinite quantity solicitations and contracts. Minimum and maximum amounts can be expressed in either quantities of supplies or services, or dollars. The clause may be suitably modified for other types of indefinite delivery contracts.

MINIMUM AND MAXIMUM AMOUNTS

During the period specified in the "Ordering" clause, the Government shall place orders totaling a minimum of [FILLIN#1#insert dollar amount]. The amount of all orders shall not exceed [FILLIN#2#insert dollar amount].

(End of Clause)

EPA-B-16-102 Estimated Cost and Fixed Fee

Prescription: Insert the following clause in cost-plus-fixed-fee contracts.

ESTIMATED COST AND FIXED FEE

- (a) The estimated cost of this contract is [FILLIN#1#Estimated Cost of Contract].
- (b) The fixed fee is [FILLIN#2#Fixed Fee].
- (c) The total estimated cost and fixed fee is [FILLIN#3#Total Estimated Cost and Fixed Fee].

(End of Clause)

EPA-B-16-103 Estimated Cost, Base Fee and Award Fee

Prescription: Insert the following clause in all cost-plus-award fee contracts.

ESTIMATED COST, BASE FEE AND AWARD FEE

- (a) The estimated cost of this contract is [FILLIN#1#Estimated Cost].
- (b) The base fee is [FILLIN#2#Base Fee].
- (c) The award fee pool available for award for this contract is [FILLIN#3#Available award fee pool].
- (d) This contract will be modified to reflect the award fee awarded as award fee determinations are made.

(End of Clause)

EPA-B-16-104 Fixed Rates for Services – ID/IQ Contract

Prescription: May be used in any ID/IQ contract which includes fixed rates for services.

FIXED RATES FOR SERVICES—ID/IQ CONTRACT

The following fixed rates for labor and routine equipment, which are inclusive of all indirect costs and profit, shall apply for the duration of the applicable contract year:

A. FIXED LABOR RATE

1. The non-Level A Task Rate shall include all costs for non-Level A tasks, e.g., level B response and costs to perform other tasks called for in the PWS. The fixed rates for the non-Level A labor categories set forth in the schedule shall be inclusive of all expenses including contract level required reports**, wages or salaries, labor costs, fringe benefits, overhead, program management, training, general and administrative expenses, and profit.

**Any specific Task Order Level reporting, not included at contract level, will be billed at the Non-Level A rate of the individual who prepares the report.

2. If a fixed rate has been established for a labor category set forth in the schedule for the contractor or subcontractor, but the contractor or subcontractor decides to provide that labor category through a third-party subcontractor, reimbursement for that labor category shall be reimbursed at cost (including any applicable indirect rates) but will not, in any event, exceed the rate set forth in this contract for that labor category for the contractor or subcontractor, depending upon which entity (contractor or subcontractor) acquires the labor.

3. When an individual employee's normally assigned category of labor is higher than the function he/she is performing during any period of work at a specific site, the rate charged for that employee shall be based on the function that the employee is performing (e.g., Senior Scientist who is performing the duties of a Junior Technician shall be charged at the loaded fixed labor rate for a Junior Technician during the period of time he/she is performing these duties).

4. When an individual employee's normally assigned category of labor is at a rate lower than the

function he/she is performing during any period of work at a specific site, the rate charged for that employee shall be based on the actual rate paid to that employee (e.g., Junior Technician performing the duties of a Senior Scientist shall be charged at the fixed labor rate for a Senior Scientist only if the employee is paid by the contractor at the rate of a Senior Scientist). If the employee is not paid at the higher rate, the contractor shall only bill at the rate of the employee's normally assigned category of labor. The employee must meet the qualifications set forth in the contract for the labor category being performed.

5. In the event that on-going work on-site is interrupted at any time due to inclement weather, unsafe condition, or other conditions beyond either the control of the contractor or the control of the Government, as determined by the on-scene coordinator, EPA will not pay the contractor for any labor costs during such interruptions; that is, EPA will not reimburse the contractor in excess of those hours actually worked on the site. The contractor shall not be reimbursed for standby.

B. FIXED EQUIPMENT RATE

1. The Routine Equipment and Supplies to be included in the Fixed Equipment Rate can be found in Attachment L-1 in the Table 3 Cost Model charts. The fixed equipment rate is separate and distinct from the fixed labor rate. Any cost accounted for in the fixed labor rates is not to be included in the fixed equipment rates.

2. Equipment rates constitute rental charges to the Government for use of equipment on task orders or TDDs. The fixed rates for equipment are inclusive of all expenses including maintenance and calibration, overhead, general and administrative expenses, and profit. No extra charges for normal operation of equipment will be allowed. All equipment must be provided in good working order and any repairs necessitated by failure to maintain equipment in a good working order shall be accomplished in a timely manner and at the contractor's expense.

3. The contractor shall invoice for actual usage of the equipment at the daily rates listed above.

4. Once mobilized, the Contractor may elect to substitute identical equipment types for what is already on site. However, EPA will not pay any associated mobilization charges for any such item(s).

C. COST REIMBURSEMENT PORTION - OTHER DIRECT COSTS

The cost reimbursement portion of the contract consists of travel, specialized labor, non-routine equipment, field subcontracts, and other direct costs which are reasonable, allocable and allowable. All costs that do not come within these limited categories are considered to be part of the fixed labor and equipment rates portion of the contract. Therefore, these costs are separate and distinct from the fixed rates and fixed price portions of the contract. The cost reimbursement portion of the contract will be estimated and funded at the task order level on an as-needed basis. The contractor will only be reimbursed for actual costs incurred, as required to accomplish the services specified in each task order. These costs will be treated in accordance with the clause entitled, "ALLOWABLE COST AND PAYMENT (FAR 52.216-7)." Such costs shall be charged in accordance with the Contractor's established and accepted accounting practices. The

Government will compensate the contractor for incurred costs that are determined to be reasonable, allowable, and allocable.

NTE

4001 Travel \$

4002 Specialized Labor/

Non-Routine Equipment/ \$

Misc ODCs

TRAVEL

1. (a) The amount specified in the schedule for travel is an estimate only. The actual amount for travel may be greater or less than the amount estimated as long as the maximum travel ceiling amount is not exceeded. Travel is limited to site specific or other travel, as authorized by the Task Order.

(b) The Contractor's primary mobilization point for establishing reasonableness for personnel travel-associated costs shall be located within _____.
This primary mobilization point is listed below:

(c) The Contractor agrees to make every effort to mobilize field personnel from the nearest available location to the site; however, in no event shall the travel charges exceed what the charge would be if the employees were mobilized from the Contractor's primary mobilization point.

2. Allowable travel expenses shall be determined in accordance with Federal Acquisition Regulation (FAR) subpart 31.205-46, Travel Costs, and the Federal Travel Regulations (FTRs). Travel expenses include costs for transportation, lodging, meals, and incidental expenses incurred by contractor personnel in performance of this contract. Travel expenses are allowable for each employee required on-site if the work site is in excess of fifty (50) miles one way from the individual's place of employment or residence, whichever is less, and total work day (including travel time) exceeds 12 hours per day. The "50 miles in 12 hours" is the current stipulation for travel costs and may be superseded by later editions of the FAR and/or FTRs. The "50 miles in 12 hours" shall not be exceeded without the approval of the CO. The regulations in effect at any given time govern travel costs under this contract. Travel expenses may include General and Administrative expenses to the extent that it is the Contractor's normal accounting practice to charge on such a basis. In the performance of necessary travel allocable to a particular task order, the Contractor shall use the least expensive means available to the extent consistent with the requirements of each response action. Once employees are working on site, the Contractor may elect to make personnel substitutions. However, EPA will not pay any associated travel charges for any such substitution unless determined to be appropriate by the

OSC or authorized Contracting Officer Representative (COR). On occasions where an employee takes sick or vacation leave from an EPA site, the government will not pay any travel costs associated with the departing employee or for the employee designated as the replacement. Reimbursement of travel expenses by EPA will be consistent with the FTRs and subject to the following: Costs incurred for lodging, meals and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed, on a daily basis, the maximum per diem rates in effect at the time of travel as set forth in the FTRs. NOTE: The FTRs include a daily ceiling amount that is not to be exceeded. Within the total ""daily"" amount, there are two separate ceilings (one for per diem and one for lodging) that also cannot be exceeded. For example, if a city has a daily total allowable travel amount listed at \$100.00--consisting of \$75.00 for lodging and \$25.00 for meals and incidental expenses (M&IE)--the allowable costs for lodging shall not exceed \$75.00 and the allowable costs for MI&E shall not exceed \$25.00. Documentation to support actual costs incurred shall be in accordance with the contractor's established practice; however, notwithstanding the contractor's policy, a receipt is required for all incidental travel expenditures in excess of \$75.00, including receipts for common carrier transportation expenditures and hotel receipts. Thus, lodging costs will be reimbursed by EPA for only actual costs incurred and paid by the contractor up to the ceiling established in the FTRs. The contractor may elect to reimburse its employees for meals and incidental expenses on a per diem basis, and the Contractor will be reimbursed for such PAYMENTS, provided the employees are actually paid on a per diem basis. In no event shall the reimbursement be more than what is paid to the recipient employee.

3. When an employee is required to travel in excess of fifty (50) miles one way from his/her residence or place of employment (whichever is less) to a site and return, such travel is considered work time for which reimbursement by the Government should be made at appropriate straight time rates. Reimbursement for travel time shall not be made by EPA if the contractor's employee(s) is/are not paid for travel time. Miles shall be measured in radial miles or actual miles as determined by the contracting officer.
4. For any employee, routine daily commuting time (less than 50 miles one-way) to and from the work site is not an allowable charge under the contract. The Contractor agrees to make every effort to utilize employees from the nearest possible location.
5. Except as explicitly set forth below, the Contractor shall be reimbursed for reasonable and allocable travel costs actually incurred by and paid to the Contractor's employees.
6. (a) Consistent with the expected duration of the site, the contractor shall ensure to the extent practicable that lodging is secured on ""other than a daily rate basis"" so that maximum quantity and term discounts are achieved.
 (b) Further, on long-term sites, to the maximum extent practicable, the contractor shall secure full service lodging suites inclusive of kitchen facilities. A long-term site is defined as an active site with a duration of greater than sixty days.
 (c) Personnel subject to this limitation include alternate relief personnel mobilizing to an existing long-term site.

SPECIALIZED LABOR

(a) Costs for Specialized Labor are separate and distinct from the fixed rates. Allowable and allocable direct and indirect costs for Specialized Labor that have been authorized by the Contracting Officer in a Task Order (TO) and specified in a Technical Direction Document (TDD) may be paid on a cost reimbursement basis. Costs for Specialized labor will be treated in accordance with the Clause entitled ""Allowable Cost and Payment (FAR 52.216-7)"" and shall be charged in accordance with the Contractor's established and accepted accounting practices.

(b) As appropriate, a ceiling shall be established in a TO and TDD for Specialized Labor for the current contract year and/or TO period of performance. Cumulative costs for Specialized Labor for the prime contractor and all team subcontractors in excess of the amounts established in the TO are not allowable as a charge to this contract without the prior written approval of the Contracting Officer.

(c) Specialized Labor includes but is not limited to the following professional specialists not available for day to day operations:

- structural engineers
- compressed gas cylinder expert
- UXO (ordnance specialist)
- construction inspection

NON ROUTINE EQUIPMENT

Non-Routine Equipment is defined as any equipment not included in the routine equipment list. Non-Routine Equipment charges must be approved by the Contracting Officer and Project Officer.

FIELD SUBCONTRACTS

Field subcontracts may include well drilling; monitoring well installation; geophysical investigation techniques, such as ground penetrating radar; leases for non-routine equipment; laboratory analytical services; and other services necessary to perform the Performance Work Statement.

OTHER DIRECT COSTS (ODCs)

Materials and supplies are separate and distinct from those items included in the fixed rate or fixed price portions of the contract or included in the contractor's indirect rates. The contractor shall not charge the Government as materials/supplies those items that are priced in the fixed rates or fixed price portions of the contract or included in the indirect rates.

(End of Clause)

EPA-B-31-101 Other Direct Costs

Prescription: Insert the following clause in contracts with cost-reimbursement elements when circumstances dictate the use of cost element ceilings. This clause may be modified to include any program-specific Other Direct Cost (ODC) instructions and/or guidance.

OTHER DIRECT COSTS

For the categories listed, Other Direct Costs in excess of the following are not allowable as a charge to this contract without the prior written approval of the Contracting Officer:
[FILLIN#1#Insert Other Direct Costs].

(End of Clause)

EPA-B-32-101 Limitation of Funds Notice

Prescription: Contracting officers shall insert the subject clause or an alternate in cost reimbursable contracts for severable services. The basic form of the clause shall be used in cost-plus-fixed-fee contracts. Alternate I shall be used in cost-reimbursement contracts with no fee or cost-sharing. Alternate II shall be used in cost-plus-award-fee contracts

LIMITATION OF FUNDS NOTICE

(a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Pursuant to clause [52.232-22/Limitation of Funds](#), incremental funding in the amount of \$[FILLIN#1#insert dollar amount] is allotted to cover estimated cost. Funding in the amount of \$[FILLIN#2#insert dollar amount] is provided to cover the corresponding increment of fixed fee. The amount allotted for costs is estimated to cover the contractor's performance through [FILLIN#3#insert appropriate date].

(b) When the contract is fully funded as specified in clause [EPA-B-16-102/ Estimated Cost and Fixed Fee](#), then clause [52.232-20/Limitation of Cost](#) shall become applicable.

(c) Recapitulation of Funds

Funding Action	Estimated Cost	Fixed Fee	Total CPFF
Previous Amount [FILLIN#4#	Estimated Cost,	Fix Fee,	Total CPFF]
This Modification [FILLIN#5#	Estimated Cost,	Fix Fee,	Total CPFF]
Total Funded [FILLIN#6#	Estimated Cost,	Fix Fee,	Total CPFF]
Total Per Contract [FILLIN#7#	Estimated Cost,	Fix Fee,	Total CPFF]
Balance Unfunded [FILLIN#8#	Estimated Cost,	Fix Fee,	Total CPFF]

(End of Clause)

Alternate I: The Contracting Officer shall include the Alternate I version of the clause in cost-reimbursement with no fee or cost-sharing contracts.

EPA-B-32-101 Limitation of Funds Notice – Alternate I

LIMITATION OF FUNDS NOTICE - ALTERNATE I

(a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Pursuant to clause [52.232-22/Limitation of Funds](#), incremental funding in the amount of \$[FILLIN#1#insert dollar amount] is allotted to cover estimated cost. The amount allotted for costs is estimated to cover the contractor's performance through [FILLIN#2#insert appropriate date].

(b) When the contract is fully funded as specified, then clause [52.232-20/Limitation of Cost](#) shall become applicable.

(c) Recapitulation of Funds

Funding Action Estimated Cost

Previous Amount [TDB]

This Modification [TDB]

Total Funded [TDB]

Total Per Contract [TDB]

Balance Unfunded [TDB]

(End of Clause – Alternate I)

Alternate II: The Contracting Officer shall include the Alternate II version of the clause in cost-plus-award-fee contracts.

EPA-B-32-101 Limitation of Funds Notice – Alternate II

LIMITATION OF FUNDS NOTICE - ALTERNATE II

a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Pursuant to clause [52.232-22/Limitation of Funds](#), incremental funding in the amount of \$[FILLIN#1#insert dollar amount] is allotted to cover estimated cost. Funding in the amount of \$[FILLIN#2#insert dollar amount] is provided to cover the corresponding increment of base fee. Funding in the amount of \$[FILLIN#3#insert dollar amount] is provided to cover the corresponding increment of the award fee pool. The amount allotted for costs is estimated to cover the contractor's performance through [FILLIN#4#insert appropriate date].

(b) When the contract is fully funded (i.e., the sum of the total estimated cost, base fee, award fee pool available for award, and award fee awarded, as set forth in the schedule of this contract), then clause [52.232-20/Limitation of Cost](#) shall become applicable.

(c) Recapitulation of Funds

Funding Action	Estimated Cost	Award Fee	Fixed Fee	Total CPAF
Previous Amount	[TDB]	[TDB]	[TDB]	[TDB]
This Modification	[TDB]	[TDB]	[TDB]	[TDB]
Total Funded	[TDB]	[TDB]	[TDB]	[TDB]
Total Per Contract	[TDB]	[TDB]	[TDB]	[TDB]
Balance Unfunded	[TDB]	[TDB]	[TDB]	[TDB]

(End of Clause – Alternate II)

EPA-B-32-102 Funding

Prescription: Insert in appropriate contracts where funds for obligation of total contract price are not available at time of award. This clause is applicable to cost-type contracts, fixed unit price contracts with estimated quantities, and term-form contracts where services are purchased in increments.

FUNDING

At time of contract award, total funding for this contract is not available for obligation. As funds become available, modifications will be issued to increase the funding amount until the total price of the contract is obligated.

(End of Clause)

EPA-B-32-103 Limitation of Government's Obligation

Prescription: Contracting officers shall insert the subject clause in fixed-price and time-and-materials contracts and orders for severable services that include separate contract line items that may require incremental funding as the budget requires.

LIMITATION OF GOVERNMENT'S OBLIGATION

(a) Severable services may be incrementally funded. Non-severable services shall not be incrementally funded. Contract line items [FILLIN#1#insert number] through [FILLIN#2#insert number] are severable and may be incrementally funded. For these items, the sum of

\$(FILLIN#3#insert dollar amount) of the total price is presently available for payment and allotted to this contract.

(b) For items identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those items for the Government's convenience, approximates the total amount currently allotted for those items to the contract. The Contractor shall not continue work on those items beyond that point. Subject to the clause entitled "Termination for Convenience of the Government," the Government will not be obligated, under any circumstances, to reimburse the Contractor in excess of the amount payable by the Government in the event of the termination of applicable contract line items for convenience including costs, profit, and estimated termination costs for those line items.

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (h) of this clause, the Contractor will notify the Contracting Officer, in writing, at least ____ (FILLIN#4#number of days) days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate ____ (FILLIN#5#percentage) percent of the total amount currently allotted to the contract for performance of the applicable items. The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of the applicable line items up to the next scheduled date for the allotment of funds identified in paragraph (a) of this clause, or to a substitute date as determined by the Government pursuant to paragraph (d) of this clause. If, after such notification, additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause entitled "Termination for Convenience of the Government."

(d) The parties contemplate that, subject to the availability of appropriations, the Government may allot additional funds for continued performance of the contract line items identified in paragraph (a) of this clause and will determine the estimated period of contract performance which will be covered by the funds. If additional funds are allotted, the Contracting Officer will notify the Contractor in writing. The Contractor shall not resume performance of the contract line items identified in paragraph (a) until the written notice is received. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and to the new estimated period of contract performance. The contract will be modified accordingly.

(e) The Government may, at any time prior to termination, allot additional funds for the performance of the contract line items identified in paragraph (a) of this clause.

(f) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default". The provisions of this clause are limited to the work and allotment of funds for the contract line items set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded.

(g) Nothing in this clause affects the right of the Government to otherwise terminate this contract pursuant to the contract clause entitled "Termination for Convenience of the Government".

(h) The parties contemplate that the Government may obligate funds to this contract in accordance with the following schedule:

RECAPITULATION:

	PRIOR AMOUNT	THIS MOD	NEW AMOUNT
Base Period			

Total Maximum Amount:[FILLIN#6#insert dollar amount]

Funded Amount:[FILLIN#7#insert dollar amount]

(End of Clause)

EPA-B-32-104 Consideration and Payment

Prescription: The contracting officer shall insert this clause, or one substantially the same as this clause, in fixed price contracts that include severable services that may be required to be funded incrementally due to budgetary constraints. The funding should be provided to fund monthly increments and not partial months. Paragraph (a) of this clause may be modified to reflect the applicable period of performance.

CONSIDERATION AND PAYMENT

(a) Payment shall be made monthly in arrears for services performed during the preceding month at the fixed-price rate of [FILLIN#1#insert dollar amount] per month for the base period. If Options are exercised as identified in Section H, the fixed-price for Option Period I shall be [FILLIN#2#insert dollar amount] per month; for Option Period II the fixed-price shall be [FILLIN#3#insert dollar amount] per month; for Option Period III the fixed-price shall be [FILLIN#4#insert dollar amount] per month.

(b) If, as a result of contract award, services commence on a date other than the first of the month, the amount due for the first month's services shall be determined by dividing the fixed-price monthly rate by 30 and multiplying that figure by the number of days remaining in the month.

(c) See Section I clause entitled "Prompt Payment" for details concerning payment dates.

(d) The fixed price per month set forth in paragraph (a) shall include all costs and any related profit for providing all services as specified in the Statement of Work including, but not necessarily limited to wages, labor overhead, general and administrative expenses, other direct costs related to performance, and profit.

(End of Clause)

EPA-B-36-101 Fixed Labor Rates for Task Ordering Pricing (A-E Services)

Prescription: The Contracting Officer shall insert this clause, or one substantially the same as this clause, in fixed-rate, indefinite delivery/indefinite quantity contracts for Architect-Engineer Services.

FIXED LABOR RATES FOR TASK ORDER PRICING (A-E SERVICES)

(a) The following fully loaded, fixed hourly labor rates are the maximum allowable labor rates which may be used by the Contractor to price task orders under this contract. Lower fully loaded, fixed hourly labor rates may be proposed by the Contractor or negotiated by the Contracting Officer on an individual task order basis. Proposals for individual task orders shall be prepared in accordance with the instructions set forth in the Section G clause "Procedures for Issuing Task Orders (Architect-Engineer Services)". The Contract Year(s) identified below consist of [FILLIN#1#Contracting Officer to insert corresponding number] sequential 12-month periods, beginning with Contract Year 1, which extend 12 months from the effective date of the contract.

1) Fully Loaded, Fixed Hourly Labor Rates (Prime Contractor) - Including Profit, Overhead, G&A, and Fringe Benefits:

Contract Year	1	2	3	4	5
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Labor Category [FILLIN#2#insert number/name]

[The Contracting Officer may either insert the corresponding fully loaded hourly labor rates per contract year per labor category or reference "See Attachment [FILLIN#3#insert number/name]", which contains the fully loaded hourly labor rates per contract year per labor category]

2) Fully Loaded, Fixed Hourly Labor Rates (Subcontractor(s)) - Including Profit, Overhead, G&A, and Fringe Benefits:

Contract Year	1	2	3	4	5
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Labor Category [FILLIN#4#insert number/name]

[The Contracting Officer may either insert the corresponding fully loaded hourly labor rates per contract year per labor category or reference "See Attachment [FILLIN#5#insert number/name]", which contains the fully loaded hourly labor rates per contract year per labor category]

(b) The fully loaded, fixed hourly labor rates in paragraph (a), above, shall constitute complete compensation for all direct labor costs, labor-related indirect costs, overhead, and profit.

(c) Costs for material and other direct costs will be negotiated on a task order specific basis, as appropriate. Reasonable and allocable material handling costs or material indirect costs may be included in the charge for material or other direct costs to the extent they are clearly excluded from the fully loaded, fixed hourly labor rates identified above, provided they are in accordance with the Contractor's usual accounting practices, and consistent with Subpart 31.2 of the Federal Acquisition Regulation. No profit margin shall be added to material or other direct costs, as profit is already included in the fully loaded, fixed hourly labor rates identified above.

(End of Clause)

52.2.3 UCF Section C – Description/Specifications.

EPA-C-10-101 Statement of Work/Performance Work Statement/Specifications

Prescription: Insert the following clause, or one substantially the same as this clause, in all solicitations and contracts. For those contracts where work is ordered by work assignments, task orders, or delivery orders, the Contracting Officer shall specify which ordering mechanism will be used.

STATEMENT OF WORK/PERFORMANCE WORK STATEMENT/SPECIFICATIONS

The Contractor shall furnish the necessary personnel, material, equipment, services, and facilities (except as otherwise specified), to perform the [FILLIN#1#statement of work/performance work statement/specifications] included in Attachment [FILLIN#2#insert name/number]. Work will be ordered against the subject [FILLIN#3#statement of work/performance work statement/specifications] through Contracting Officer issuance of [FILLIN#4#work assignments, task orders, or delivery orders].

(End of Clause)

EPA-C-10-102 Incorporation of Contractor's Technical Proposal

Prescription: Insert the following clause when it is necessary to incorporate a portion of the Contractor's technical proposal in negotiated contracts. The specific parts of the proposal to be incorporated must be identified in the clause.

INCORPORATION OF CONTRACTOR'S TECHNICAL PROPOSAL

Section(s) [FILLIN#1#insert number] of the Contractor's technical proposal entitled, [FILLIN#2#insert name] dated [FILLIN#3#insert date] is/are incorporated by reference and made a part of this contract. In the event of any inconsistency between the clauses of this contract and the Contractor's technical proposal, the contract clauses take precedence.

(End of Clause)

EPA-C-10-103 Incorporation of Contractor's Quality Assurance (QA) Plan

Prescription: Insert the following clause in contracts to incorporate the Contractor's QA plan in the contract by reference.

INCORPORATION OF CONTRACTOR'S QUALITY ASSURANCE (QA) PLAN

The Contractor shall adhere to the procedures set forth in its QA plan dated [FILLIN#1#insert date], which is incorporated by reference.

(End of Clause)

52.2.4 UCF Section D – Packaging and Marking.

EPA-D-47-101 Shipment and Marking

Prescription: The Contracting Officer may insert this clause or a clause substantially the same as this clause when the contract requires deliverables other than reports. Paragraphs (b) and (c) shall be tailored to include the appropriate Ship To and Marking Information.

SHIPMENT AND MARKING

(a) The contractor shall ensure that the contract number and information contained in paragraph (c) are placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract, except for reports.

(b) Ship deliverable items, except for reports, to:
[FILLIN#1#Ship to Address for Deliverable Items except reports]

(c) Mark deliverables, except for reports, for:
[FILLIN#2#Mark Deliverables, except for reports, for: the recipient]

(End of Clause)

52.2.5 UCF Section E – Inspection and Acceptance [Reserved].

52.2.6 UCF Section F – Deliveries or Performance.

EPA-F-12-101 Period of Performance

Prescription: Insert this clause when there is a period of performance. If no exact work start date has been established, the starting date in the clause may be completed appropriately. This clause is not used in fixed-price contracts requiring specified deliverables. If no final reports are required, modify the clause accordingly.

PERIOD OF PERFORMANCE

The period of performance of this contract shall be from [FILLIN#1#insert date] through [FILLIN#2#insert date] exclusive of all required reports.

(End of Clause)

52.2.7 UCF Section G – Contract Administration Data.**EPA-G-32-101 Additional Invoicing Instructions – Oil Removal Activities**

Prescription: Contracting Officers and other warranted officials shall include the subject clause in all procurement instruments (e.g., Contracts, Task Orders, Delivery Orders, Purchase Orders, Blanket Purchase Agreements, Basic Ordering Agreements) that involve oil spill response activities, and where the contractor /vendor submits an invoice to the EPA to request payment or reimbursement of allocable and allowable costs.

ADDITIONAL INVOICING INSTRUCTIONS - OIL REMOVAL ACTIVITIES

(a) The contractor may be tasked to provide support to the EPA in carrying out oil removal activities in accordance with 33 U.S.C. 1321 Clean Water Act (CWA) or Federal Water Pollution Control Act (FWPCA), and under which the Agency may be entitled to access the Oil Spill Liability Trust Fund (OSLTF). In support of the EPA's effort to obtain cost reimbursement under such activities and the concomitant requirement to provide full and timely cost documentation, and when specifically authorized and tasked in writing by the Contracting Officer, and in addition to any other contract invoicing requirements (e.g., SUBMISSION OF INVOICES, INVOICE PREPARATION INSTRUCTIONS), the Contractor shall provide one (1) additional monthly invoice copy, with the following additional supporting documentation:

Direct Labor (Fixed Rate) - identify by labor category the number of hours, fixed hourly rate, and the total dollars billed for the period of the invoice;

Direct Labor (Cost Reimbursable) - identify by labor category the total number of loaded direct labor hours billed for the period in the invoice;

Indirect Cost Rates (Cost Reimbursable) - identify by cost center, the indirect cost rate, the period, and the cost base to which it is applied;

Subcontracts - identify the major cost elements for each subcontract;

Other Direct Costs - provide a detailed explanation and receipt copies when the cost of any individual ODC item (e.g., photocopying, material, supplies, telephone usage) exceeds \$ _____, or an amount as may be established elsewhere in the contract (see also INVOICE PREPARATION INSTRUCTIONS);

Contractor-Acquired Equipment - for any item charged as a direct cost to the contract, identify by item the quantities, unit prices, and total dollars billed;

Contractor-Acquired Software - for any item charged as a direct cost to the contract, identify by item the quantities, unit prices, and total dollars billed;

Travel - provide a detailed explanation and receipt copies when the cost of any individual trip exceeds \$ _____, or an amount that may be established elsewhere in the contract (see also INVOICE PREPARATION INSTRUCTIONS); identify by trip, the number of travelers, the duration of travel, the point of origin, destination, purpose of trip, transportation by unit price, daily per diem rates, and total dollars billed;

Local Travel - Detailed reporting is not required for local travel;

Form 1900-55 (RCMS) - Contractor Report (attach if applicable);

Monthly Contractor Report - attach if applicable; and

Technical Direction Document - attach if applicable

(b) The Contractor shall be responsible for clearly marking all information on invoices, receipts, or any other supporting documentation that it considers to be Confidential Business Information (CBI).

NOTE: Highlighting or boxing are acceptable marking techniques; watermarks are unacceptable.

(c) The Contractor shall submit all clearly marked information/documentation either electronically or by US Mail to the Cincinnati Finance Center:

Electronic: CINWD_OilSpill@epamail.epa.gov

U.S. Mail or Overnight: U.S. Environmental Protection Agency
Attn: Accounts Receivable Branch, OIL TEAM
26 West Martin Luther King Drive, MS-NWD2
Cincinnati, Ohio 45268

(End of Clause)

EPA-G-36-101 Government Contract-Level COR (Construction)

Prescription: The contracting officer may insert this clause, or one substantially the same as this clause, in contracts for Construction Services, as appropriate.

GOVERNMENT CONTRACT-LEVEL COR (CONSTRUCTION)

The Government Contract-Level COR identified in the Section G Clause "CONTRACT ADMINISTRATION REPRESENTATIVES" is authorized to make an interpretation as to the meaning of the specifications and drawings based on request, and therefore is responsible for ensuring conformance with the technical requirements of the contract. The Contract-Level COR shall also approve all pre-final progress payment requests. However, the Contract-Level COR is not authorized to make any commitments or changes which affect the contract price or other contract terms and conditions, as any such changes shall be immediately referred to the Contracting Officer for necessary action. Recommendation for final acceptance of work shall be by the Contract-Level COR. Final acceptance of work shall be by the Contracting Officer, or his authorized representative.

(End of Clause)

EPA-G-36-102 Responsibility of Contract-Level COR (A-E Services)

Prescription: The contracting officer may insert this clause, or one substantially the same as this clause, in contracts for Architect-Engineer Services, as appropriate.

RESPONSIBILITY OF CONTRACT-LEVEL COR (A-E SERVICES)

The Contract-Level COR, [FILLIN#1#insert name], is responsible for clarifying the technical aspects of the project and general review of the work performed. However, the Contract-Level COR is not authorized to make any commitments or changes which affect the contract price, terms and/or conditions. Such changes can be accomplished only by the Contracting Officer in writing.

(End of Clause)

EPA-G-42-101 Contract Administration Representatives

Prescription: Include in all solicitations and contracts.

CONTRACT ADMINISTRATION REPRESENTATIVES

Contract-Level Contracting Officers Representatives (CORs)/Project Officers for this contract are as follows:

[FILLIN#1#COR/Project Officer]

[FILLIN#2#Alternate COR/Project Officer]

Contracting Officials responsible for administering this contract are as follows:

[FILLIN#3#Administrative Contracting Officer]

[FILLIN#4#Contract Specialist]

(End of Clause)

EPA-G-42-102 Authorized Representative of the Contract-Level COR

Prescription: The contracting officer may insert this clause, or one substantially the same as this clause, in those contracts that utilize the work assignment mechanism for ordering work under the contract.

AUTHORIZED REPRESENTATIVE OF THE CONTRACT-LEVEL COR

(a) The Work Assignment COR referenced in the Clause entitled "TECHNICAL DIRECTION (DEVIATION)", is the individual authorized by the Contracting Officer on an individual Work Assignment to:

- (1) receive Work Assignment deliverables;
- (2) receive copies of monthly progress reports specific to the Work Assignment for which the Work Assignment COR is authorized;
- (3) attend meetings with the Contract-Level COR and contractor in order to monitor progress of those Work Assignments for which he/she is cognizant; and
- (4) provide technical direction on those Work Assignments subject to the limitations of the above "TECHNICAL DIRECTION (DEVIATION)" clause.

(End of Clause)

EPA-G-45-101 Designation of Property Administrator

Prescription: Insert the following clause in all contracts that have a "Government Property" clause. Enter the name, organization, address, email address, and phone number (if applicable).

DESIGNATION OF PROPERTY ADMINISTRATOR

The property administrator for this contract is as follows:

[FILLIN#1# Property Administrator's name, organization, address, email address, and phone number (if applicable)]

The property administrator is the Contracting Officer's designated representative on property matters. The Contractor shall furnish all required information on property to the property administrator.

(End of Clause)

52.2.8 UCF Section H – Special Contract Requirements.

EPA-H-03-101 Reserved.

EPA-H-04-101 Retention and Availability of Contractor Files

Prescription: Insert in all Superfund contracts.

RETENTION AND AVAILABILITY OF CONTRACTOR FILES

(a) The contract contains the Federal Acquisition Regulation (FAR) Clause 52.215-2 ""Audit and Records - Negotiation (JUN 1999),"" wherein the contractor is required to maintain and make available to the Contracting Officer or representative of the Contracting Officer (in accordance with FAR Subpart 4.7, ""Contractor Records Retention"") at its office at all reasonable times the books, records, documents, and other evidence relating to this contract (including personnel utilization records, site records, and accounting procedures and practices sufficient to reflect properly all costs claimed to have been incurred under this contract). Such files shall be made available for examination, audit or reproduction.

(b) The contractor is advised that the Government may file suit against potential responsible parties for costs incurred relative to site-related response activities. In such proceedings, the contractor's cost and performance records may become an integral part of the Government's case.

(c) Accordingly, due to the extended nature of court proceedings and EPA audit requirements, the contractor shall make available to the Government, and only to the Government, the records described in (a) and (b) above for a period of ten (10) years after final payment under the contract (See FAR 4.703(b)(1)).

(d) In addition, the contractor shall make available to the Government, and only to the Government, the records relating to any appeals, litigation or the settlement of claims with third parties and which relate to this contract (i.e., cost recovery) until such appeals, litigation, or claims are disposed of.

(e) The contractor shall not destroy original records relating to the contract until (1) all litigation involving the records has been finally settled and approval is obtained from the Contracting Officer, or (2) ten (10) years have passed from the date of final payment, and no litigation involving the records has been instituted, and approval of the Contracting Officer is obtained. In no event should individual records be destroyed if litigation relating to such records is in-process or pending.

(f) From time to time, the Government may, in support of litigation cases, have the need for the contractor to research and make available such records in a form and manner not normally maintained by the contractor. Such effort shall be deemed to be within the scope of work under this contract. If this effort is required after performance of this contract, a separate negotiated procurement action may be instituted with the contractor.

(End of Clause)

EPA-H-07-101 Public Communication

Prescription: Contracting Officer may include in contracts where contractor may be required to interact/communicate with other federal, state and local government entities, and the public, on behalf of the EPA.

PUBLIC COMMUNICATION

The Contractor shall not represent itself as EPA to outside parties. To maintain public trust, and to not mislead the public, the Contractor shall, when communicating with outside parties, identify itself as an Agency Contractor.

When performing work for EPA, contractor personnel must be easily identifiable to the public as an EPA contractor through use of badges, corporate logos, or other distinguishable credentials.

(End of Clause)

EPA-H-07-102 Identification of On-Site Contractor Employees

Prescription: The Contracting Officer shall insert this clause in solicitations and contracts with on-site contractor employees.

IDENTIFICATION OF ON-SITE CONTRACTOR EMPLOYEES

All Contractor, subcontractor, and consultant personnel shall wear prominently displayed identification badges at all times when performing work on EPA property or attending meetings in the performance of this contract. The badge shall contain the individual's name, the company name and logo. When participating in such meetings (e.g., as a speaker, panel member), those individuals in Contractor employ must supplement physical identification (e.g., badges, place markers) with verbal announcements so that it is clear to the assembled group that they are employees of the Contractor, not Agency staff members. In addition, when working on EPA property, all contractor, subcontractor, and consultant personnel shall have signs visible on their desks or at their work sites that clearly state that they are not EPA employees.

(End of Clause)

EPA-H-07-103 Notice Regarding Prohibited Contractor Activities on Environmental Protection Agency (EPA) Contracts

Prescription: EPAAR: an approved local clause.

NOTICE REGARDING PROHIBITED CONTRACTOR ACTIVITIES ON ENVIRONMENTAL PROTECTION AGENCY (EPA) CONTRACTS

The Contractor shall not perform any of the following activities on behalf of EPA in connection with this contract:

1. The actual preparation of Congressional testimony.
2. The interviewing or hiring of individuals for employment at EPA.
3. Developing and/or writing of Position Descriptions and Performance Standards.
4. The actual determination of Agency policy.
5. Participating as a voting member on a Performance Evaluation Board; participating in and/or attending Award Fee meetings.
6. Preparing Award Fee Letters, even under typing services contracts.
7. The actual preparation of Award Fee Plans.
8. The preparation of documents on EPA Letterhead other than routine administrative correspondence.
9. Reviewing vouchers and invoices for the purposes of determining whether costs, hours, and work performed are reasonable.
10. The preparation of Statements of Work, Work Assignments, Technical Direction

Documents, Delivery Orders, or any other work issuance document under a contract that the contractor is performing or may perform. Such a work issuance document, prepared by an EPA prime contractor under an EPA prime contract for its subcontractor, is exempt from this prohibition.

11. The actual preparation of responses to audit reports from the Inspector General, General Accounting Office, or other auditing entities.
12. Preparing responses to Congressional correspondence.
13. The actual preparation of responses to Freedom of Information Act requests, other than routine, non judgmental correspondence.
14. Any contract which authorizes a contractor to represent itself as EPA to outside parties.
15. Conducting administrative hearings.
16. Reviewing findings concerning the eligibility of EPA employees for security clearances.
17. The actual preparation of an office's official budget request.

(End of Clause)

EPA-H-09-101 Contractor Disclosure Requirement for Conflicts of Interest

Prescription: Insert in contracts which includes EPAAR 1552.209-71, Organizational Conflict of Interest.

CONTRACTOR DISCLOSURE REQUIREMENTS FOR CONFLICTS OF INTEREST

In submitting notices of potential corporate, affiliate or personal conflicts of interest, the Contractor shall answer each of the following questions as thoroughly as possible. If necessary, the Contracting Officer may request additional information. If a particular question does not apply to the particular situation, the Contractor shall reply by writing "Not Applicable" rather than by making no response.

The Contractor shall forward a copy of the company's answers to both the Contracting Officer and the Project Officer. Subcontractors must submit their answers to the EPA through the Prime contractor. This information, however, may be marked confidential and sent in a sealed and numbered envelope which is to be opened only by the Contracting Officer. All EPA decisions regarding the notifications will be sent to the prime contractor in writing. The prime contractor shall be responsible for forwarding the Contracting Officer's decision to the subcontractor.

1. During the past three (3) calendar years, has the company or any employees that will be working at this site performed work at this site/facility? If the answer is "yes", describe, in detail, the nature of work the company or employee(s) performed and provide the names of the employee(s); the dates the work took place and identify the client(s) for whom the work was

performed. Note: For reporting purposes, all clients including Commercial, Federal, State or local entities other than the EPA should be included in the check for potential conflict of interest.

2. For any work identified in question 1 that was performed by the company, provide the approximate dollar value of work performed for each client as well as the company's annual sales by fiscal year.

3. With whom has this potential conflict of interest been discussed (include EPA personnel, legal advisors, etc.)?

4. Provide, if relevant, information regarding how the company's organizational structure and/or management system affects its knowledge of possible conflicts or interest relating to other divisions or sections of the organization and how that structure or system could prevent or mitigate/neutralize potential conflicts of interest.

5. Provide an update of any significant change in control or ownership of the company since the submission of information for responsibility determination.

6. Provide any additional information which may be pertinent to this request.

When submitting responses to these questions, the Contractor shall provide the name and telephone number of someone in the company who is knowledgeable with regard to this notice of potential conflict of interest.

(End of Clause)

EPA-H-09-102 Contractor Disclosure Requirements for Future Contracting Requests

Prescription: Insert in any START contract which includes EPAAR 1552.209-74, Alt II, Limitation of Future Contracting (START).

CONTRACTOR DISCLOSURE REQUIREMENTS FOR FUTURE CONTRACTING REQUESTS

In accordance with the Limitation of Future Contracting clause, the Contractor shall, in submitting requests for consent for future contracting efforts, answer each of the following questions as thoroughly as possible. If necessary, the Contracting Officer may request additional information. If a particular question does not apply to the contracting effort in question, the Contractor shall reply by writing "Not Applicable" rather than by making no response.

The Contractor shall forward a copy of the company's answers to both the Contracting Officer and the Project Officer. Subcontractors must submit their answers to the Contractor who will forward them to the Contracting Officer. This information, however, may be marked confidential and sent in a sealed and numbered envelope which is to be opened only by the Contracting Officer. All EPA decisions regarding the requests will be sent to the prime contractor in writing. The prime contractor shall be responsible for forwarding the Contracting Officer's decision to the subcontractor.

1. Describe all aspects of the work to be performed and whether that work will impair or affect the company's objectivity in performing work on your EPA contract. Explain. Also address whether:

(a) The work to be performed involves matters which might require the company to formulate

and express opinions on technical theories, or as to the principles which should be applied?

(b) The work involves searching land records for responsible parties or designing and working with documents and witnesses used or intended for use in litigation?

(c) If the company wishes to enter into a subcontract agreement and will perform only limited portions of the work, describe--in specific terms--the nature of the work to be performed by the company as a subcontractor and by the prime contractor.

2. If the company is bidding on site-specific work, list all of the site(s) involved (if possible).

(a) For each site, provide a specific address which notes the EPA region the site is in as well as the county and state where the site is located.

(b) If the site is known by several different names, list each of those names.

3. If the work is not site-specific, at what facility is it projected the majority of the work will be conducted?

4. What is the estimated dollar amount and period of performance of this future contracting effort?

5. With whom has this future contracting effort been discussed (include EPA personnel, legal advisors, etc.)?

6. Provide any additional information which may be pertinent to this request.

When submitting responses to these questions, the Contractor shall provide the name and telephone number of someone in the company who is knowledgeable with regard to this request for future contracting consent.

(End of Clause)

EPA-H-09-103 Prohibition of ERRS Contractors from Contract Award

Prescription: Insert in all START solicitations when the CO determines that a conflict would exist for an ERRS contractor to also be a START contractor in the same region.

PROHIBITION OF ERRS CONTRACTORS FROM CONTRACT AWARD

An offeror shall not receive an award under this solicitation if it is determined that the offeror is currently a Region ____ Emergency and Rapid Response Services (ERRS) contractor or proposes to use a current Region ____ ERRS contractor as a team subcontractor.

(End of Clause)

EPA-H-09-104 Disclosure of Potential Conflict of Interest

Prescription: Insert in all START solicitations which include the provision *Prohibition of Emergency and Rapid Response Service (ERRS) Contractors from Contract Award*.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

(a) The Agency has determined that a significant potential conflict of interest would exist if a current Region ____ ERRS contractor is awarded this contract. To be eligible for award, each offeror must demonstrate that it is not currently a Region __ ERRS contractor.

(b) In addition, the Agency has determined that offerors with a relationship, financial or otherwise, with a current Region ____ ERRS contractor may have a potential conflict of interest. Therefore, offerors responding to this solicitation are requested to disclose any such relationships in their proposal. The disclosure statement must address actual or potential organizational conflicts of interest within the offeror's entire corporate umbrella, including parent companies, sister companies, affiliates, subsidiaries, and other interests held by the offeror; generally limited up to third tier relations unless there are potential conflict of interest concerns related to more distant affiliates. Offerors who are determined to have a conflict will be provided an opportunity to submit a plan which describes how any such conflicts will be avoided, mitigated or neutralized. The Agency will determine an offeror's eligibility for award based on the information provided.

(c) The purpose of requesting the information in paragraph (b) above is to provide the Agency with an opportunity to assess its vulnerabilities relative to organizational conflicts of interest of individual offerors prior to award. The fact that an offeror has a relationship with a current Region __ ERRS contractor will not necessarily disqualify the offeror for consideration for award on the basis of actual or potential conflicts of interest. There is no set formula for determining what relationships would result in a determination by the Contracting Officer that award to a particular offeror would not be in the best interests of the Government due to organizational conflict of interest concerns; each offeror will be evaluated individually on the basis of the information disclosed pursuant to the requirements of this provision and upon the adequacy of the offeror's plan for avoiding, mitigating or neutralizing such conflicts.

(End of Clause)

EPA-H-09-105 Technical Direction Document Conflict of Interest Notification

Prescription: Include in SF contract which includes EPAAR 1552.209-71, Organizational Conflict of Interest, and which may order work by a Technical Direction Document (TDD). Alternate I shall be used for contractors who do not have at least three years of records that may be searched.

TECHNICAL DIRECTION DOCUMENT CONFLICT OF INTEREST NOTIFICATION

Within 20 days of receipt of the Technical Direction Document (TDD), the Contractor shall provide the Contracting Officer (CO) with a conflict of interest (COI) certification. Where TDDs are issued for work on or directly related to a site, the Contractor is only required to provide a COI certification for the first TDD issued for that site. For all subsequent work on the

site, the Contractor has a continued obligation to search and report any actual or potential conflicts of interest, but no additional COI certifications are required.

Before submitting the COI certification, the Contractor shall search its records accumulated, at a minimum, over the past three (3) years immediately prior to the receipt of the TDD. In the COI certification, the Contractor must certify, to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the CO or that, to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this TDD or relating to this TDD, have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this TDD or other work relating to this site.

(End of Clause)

EPA-H-09-105 Technical Direction Document Conflict of Interest Notification – Alternate I

Prescription: Include in SF contract which includes EPAAR 1552.209-71, Organizational Conflict of Interest, and which may order work by a Technical Direction Document (TDD). Alternate I shall be used for contractors who do not have at least three years of records that may be searched.

TECHNICAL DIRECTION DOCUMENT CONFLICT OF INTEREST NOTIFICATION - ALTERNATE I

Within 20 days of receipt of the Technical Direction Document (TDD), the Contractor shall provide the Contracting Officer (CO) with a conflict of interest (COI) certification. Where TDDs are issued for work on or directly related to a site, the Contractor is only required to provide a COI certification for the first TDD issued for that site. For all subsequent work on the site, the Contractor has a continued obligation to search and report any actual or potential conflicts of interest, but no additional COI certifications are required.

Before submitting the COI certification, the contractor shall initially search through all of its available records to identify any actual or potential conflicts of interest. During the first three years of this contract, the contractor shall search through all records created since the beginning of the contract plus the records of the contractor prior to the award of the contract until a minimum of three years of records are accumulated. Once three years of records have accumulated, prior to certifying, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or

relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

(End of Alternate I)

EPA-H-09-106 Task Order Conflict of Interest Certification

Prescription: Include in contracts which includes EPAAR 1552.209-71, *Organizational Conflict of Interest*, and which may order work by a task order.

TASK ORDER CONFLICT OF INTEREST CERTIFICATION

If specified in the Task Order the contractor shall provide the contracting officer a conflict of interest certification within twenty (20) calendar days of receipt of the TO. Where TO's are issued for work on or directly related to a site, the contractor is only required to provide a conflict of interest certification for the first TO issued for that site. For all subsequent work on that site, the Contractor has a continued obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

In the certification the Contractor must certify, to the best of the Contractor's knowledge and belief, all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that, to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this TO or relating to this TO, have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this TO or other work relating to this site. If not specified in the Task Order, the contractor shall comply with clause entitled "TDD COI Notification."

(End of Clause)

EPA-H-09-106 Task Order Conflict of Interest Certification, Alternate I

Prescription: Include this clause or one substantially the same in contracts that include EPAAR 1552.209-71, *Organizational Conflict of Interest*, where work will be ordered via task orders. Include Alternate I when the task orders are subject to fair opportunity to be considered.

TASK ORDER CONFLICT OF INTEREST CERTIFICATION, ALTERNATE I

For each task order (TO) request for offer, the Contractor shall provide the Contracting Officer a conflict of interest certification within seven (7) calendar days of receipt of the task order request

for offer. Where TOs are issued for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first TO issued for that site. For all subsequent work on that site, the Contractor has a continued obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

In the certification the Contractor must certify, to the best of the Contractor's knowledge and belief, all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that, to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this TO, or relating to this TO, have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this TO or other work relating to this site.

(End of Clause)

EPA-H-09-108 Regional Crossover

Prescription: For use in regional contracts for services (may use language substantially the same as), if deemed appropriate.

REGIONAL CROSSOVER

(a) In the event of the Contractor's potential or actual conflict of interest in conducting a specific work assignment (as determined by the Contracting Officer), or when the maximum amount of effort has already been ordered or is about to be ordered by the Government, or in any other situation in which it is determined to be in the best interest of the Government, services for this Region may be ordered through another Region's contract.

(b) The Contractor agrees to accept work ordering instruments for services within any other Region, provided the amount of such services, in addition to other work performed under this contract, does not exceed the maximum amount specified in the contract.

(End of Clause)

EPA-H-09-109 Inspector Credential

Prescription: In compliance with EPA Order No. 3510, *"EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes and Other Compliance Responsibilities"*, contracting officers will insert the clause in solicitations and resulting contractual actions where the contractor is expected to be issued an Inspector Credential.

INSPECTOR CREDENTIAL

EPA issues Inspector Credentials to contractors authorized by EPA to conduct inspections, investigations and other compliance responsibilities that enforce federal environmental statutes on behalf of the EPA. The Contractor shall ensure that each Contractor Inspector Credential holder will:

- (a) Comply with all training requirements, including refresher training, policies and procedures listed in EPA Order No. 3510, *“EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes and Other Compliance Responsibilities”*; EPA Order 3500.1, *“Training Requirements for EPA Personnel Who are Authorized to Conduct Civil Compliance Inspection/Field Investigations and EPA Inspector Supervisors”*; EPA Order 1440.2, *“Safety and Health Training Requirements for Agency Employees”*, and any changes, revisions or amendments to these Orders, any subsequent Orders, or supplemental guidance.
- (b) Comply with all policies and procedures, for obtaining, holding, using and returning an EPA Contractor Inspector Credential, listed in EPA Order No. 3510 and any changes, revisions or amendments to this Order, any subsequent Order, or supplemental guidance.
- (c) *Subcontract flowdown*. The Contractor shall include the substance of this clause in subcontracts in which the subcontractors are or may be Contractor Inspector Credential holders.

EPA-H-09-110 Conflict of Interest Evaluation – Peer Reviewers and Expert Panelists

Prescription: Contracting Officers may use the subject clause (or one substantially the same; e.g., changing “chemical or topic” to something more procurement specific) in solicitations/contracts for peer review expert panelist services.

CONFLICT OF INTEREST EVALUATION – PEER REVIEWERS AND EXPERT PANELISTS

- (a) Prior to selecting expert panelists/peer reviewers, the Contractor shall perform an evaluation to determine the existence of an actual or potential conflict of interest (COI) for each proposed panel member or peer reviewer. The financial and professional information obtained by the Contractor as part of the evaluation to determine the existence of an actual or potential COI is considered private and shall not be disclosed to outside entities except as required by law and/or regulation.
- (b) The Contractor shall ensure that proposed expert panelists and peer reviewers will not have an actual or potential COI if they are selected to participate in an expert panel or peer review. When determining if a proposed peer reviewer or expert panelist may have an actual or potential COI, the Contractor shall incorporate the following yes/no questions (1) – (9) and requests for supporting information (10) – (18) into its established process to evaluate and determine the presence of an actual or potential COI:

Conflict of Interest Analysis Questions and Supporting Information

- (1) To the best of your knowledge and belief, is there any connection between the subject chemical or topic and any of your and/or your spouse's compensated or uncompensated employment, including government service, during the past 24 months? Yes__No__
- (2) To the best of your knowledge and belief, is there any connection between the subject chemical or topic and any of your and/or your spouse's research support and project funding, including from any government, during the past 24 months? Yes__No__
- (3) To the best of your knowledge and belief, is there any connection between the subject chemical or topic and any consulting by you and/or your spouse, during the past 24 months? Yes__No__
- (4) To the best of your knowledge and belief, is there any connection between the subject chemical or topic and any expert witness activity by you and/or your spouse, during the past 24 months? Yes__No__
- (5) To the best of your knowledge and belief, have you, your spouse, or dependent child, held in the past 24 months any financial holdings (excluding well-diversified mutual funds and holdings with a value of less than \$15,000) with any connection to the subject chemical or topic? Yes__No__
- (6) Have you made any public statements or taken positions on or closely related to the subject chemical or topic under review? Yes__No__
- (7) Have you had previous involvement with the development of the document (or review materials) you have been asked to review? Yes__No__
- (8) To the best of your knowledge and belief, is there any other information that might reasonably raise a question about an actual or potential personal conflict of interest or bias? Yes__No__
- (9) To the best of your knowledge and belief, is there any financial benefit that might be gained by your or your spouse as a result of the outcome of this review? Yes__No__
- (10) Compensated and non-compensated employment (for panel member/peer reviewer and spouse): list sources of compensated and uncompensated employment, including government service, for the preceding two years, including a brief description of the work.
- (11) Research Funding (for panel member/peer reviewer): list sources of research support and project funding, including from any government, for the preceding two years for which the panel member/peer reviewer served as the Principal Investigator, Significant Collaborator, Project Manager or Director. For the panel member/peer reviewer's spouse, provide a general description of the spouse's research and project activities for the preceding two years.

(12) Consulting (for panel member/peer reviewer): list all compensated consulting activities during the preceding two years, including the names of the clients if compensation provided 15% or more of your annual compensation. For the panel member's spouse, provide a general description of the spouse's consulting activities for the preceding two years.

(13) Expert witness activities (for panel member/peer reviewer): list the sources of compensated expert witness activities and a brief description of each issue and your testimony. For the panel member/peer reviewer's spouse, provide a general description of the spouse's expert testimony provided in the preceding two years.

(14) Assets: Stocks, Bonds, Real Estate, Business, Patents, Trademarks, and Royalties (for panel member/peer reviewer, spouse, and dependent children): list specific financial holdings that collectively had a fair market value greater than \$15,000 at any time during the preceding 24-month period (excluding well-diversified mutual funds, money market funds, treasury bonds and personal residence).

(15) Liabilities (for panel member/peer reviewer, spouse, and dependent children): list liabilities over \$10,000 owed at any time in the preceding twelve months (excluding a mortgage on your personal residence, home equity loans, automobile and consumer loans).

(16) Public Statements: Provide a brief description of any public statement and/or positions taken that are closely related to the matter under review by the panel member.

(17) Involvement with document under review: Provide a brief description of any previous involvement of the panel member in the development of the document (or review materials) the individual has been asked to review.

(18) Other potentially relevant information: Provide a brief description of any other information that might reasonably raise a question about actual or potential personal conflict of interest or bias.

(End of clause)

EPA-H-11-101 Health and Safety

Prescription: The contracting officer may include this clause in contracts where health and safety plans will be required prior to starting activities, and may tailor the clause depending on contract requirements.

HEALTH AND SAFETY

- (a) The nature of the work to be performed under this contract is inherently hazardous. The Contractor is responsible for the safety of its employees and subcontractor employees on-site. However, the EPA Safety, Health and Environmental Management Program

(SHEMP) manager, in coordination with the Contracting Officer (CO) and Contracting Officer's Representative (COR), has the authority to review and establish the minimum standards of safety for all individuals on-site at any time. Establishment of such standards are subject to the changes clause. In performance of work under this contract the Contractor shall, as a minimum, satisfy all Federal, state and local statutes, regulations, ordinances, etc., regarding health and safety. The Contractor shall implement and manage a Health and Safety Plan in compliance with all requirements of EPA and the Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120/121 for activities at hazardous waste sites.

- (b) The Contractor shall ensure that all Contractor personnel working at the site are in compliance with EPA, OSHA, National Fire Protection Association, state and local, internal agency policies and guidelines, and minimum standards as specified by the contract-level COR. The required level of protection may be specified by the On-Scene Coordinator (OSC) or authorized COR, CO, and/or SHEMP manager, but shall not be below what is required by applicable statutes and regulations, and shall be followed by the Contractor. If the Contractor has a dispute with respect to health and safety, which cannot be resolved among the OSC, authorized COR, CO, SHEMP manager, and the Contractor's Health and Safety representative, the matter will be referred to the Program or Regional Health and Safety Officer and to the Contractor's corporate Health and Safety representative for resolution. If the health and safety issue still cannot be resolved, then the matter will be referred to EPA's Environmental Response Team's (ERT) Safety and Occupational Health Manager, Edison, NJ, for consultation with EPA's Safety and Sustainability Division Director at Headquarters for final determination. During this dispute resolution process, the Contractor must implement an OSC, authorized COR, or SHEMP manager directive pertaining to health and safety upon issuance. Implementation of this directive may be subject to the changes clause, if the CO deems it to be a substantial change to the contract.
- (c) When a specific site safety plan is required as part of a task order to be developed by the Contractor, the plan shall be submitted to the OSC, authorized COR, and SHEMP manager for review and approval prior to commencing work. Upon receipt of the OSC's, authorized COR's, and SHEMP manager's approval and notification of CO, the Contractor shall follow such plan throughout the duration of the removal action, unless modifications to the plan have been directed by the OSC, authorized COR, and SHEMP manager. If a site safety plan is provided by the Government, the Contractor agrees to follow such plan unless objections are made known to the OSC, authorized COR and SHEMP manager within twenty-four (24) hours of its submission to the Contractor (or less if specified in the task order.) In any event, the Contractor's commencement of cleanup services absent notification of objections to the OSC, authorized COR and SHEMP manager, is deemed as acceptance of the safety plan. The Contractor is responsible for reporting any injuries, illnesses or fatalities to the OSC, authorized COR and SHEMP manager; and to report in accordance with OSHA regulations and internal agency policies and guidelines.

- (d) Notwithstanding the EPA's aforementioned rights to direct Contractor compliance with certain health and safety standards, levels and plans, the Contractor retains the right to employ more stringent health and safety requirements for itself and its subcontractors. However, any extra costs associated with these more stringent requirements shall not be borne by the EPA.

(End of Clause)

EPA-H-11-102 Contractor Use of POI

Prescription: Include in any contract which use Project Office Interface (POI) to administer contract.

CONTRACTOR USE OF POI

_____ will utilize the Program Office Interface (POI) in administering this _____ contract. The software required to operate POI is FedConnect which the contractor shall maintain and provide.

(End of Clause)

EPA-H-11-103 Government Rights Under CERCLA

Prescription: Insert in solicitations/contracts where the contractor will be performing under CERCLA.

GOVERNMENT RIGHTS UNDER CERCLA

The award of this contract does not constitute a waiver of the Government's right to bring action against any person, or persons, including the Contractor, for liability under any provision of CERCLA. Furthermore, if the Contractor is determined to be liable under Section 107 of CERCLA, the Government may set-off the amount of any such liability against amounts otherwise due and payable under the contract. The disclosure of any potential conflicts of interest as required in the CONFLICT OF INTEREST NOTIFICATION clauses in this contract shall not be construed or interpreted as an admission by the Contractor of any liability under CERCLA. Further, nothing contained within this contract shall be deemed, construed and/or interpreted as a waiver by the Contractor of any defenses it may have or may wish to assert in any action by the Government under CERCLA.

(End of Clause)

EPA-H-11-104 Signing of Uniform Hazardous Wastes Manifests

Prescription: Insert in all RAC contracts.

SIGNING OF UNIFORM HAZARDOUS WASTES MANIFESTS

(a) Unless otherwise directed in writing by the EPA Project Officer, the Contractor is authorized to sign uniform hazardous waste manifest forms (40 CFR Part 262) ("manifests") and land ban notifications/certifications/demonstrations (40 CFR Part 268.7 and .8)("land ban records") for EPA at Superfund sites which involve off-site transport of hazardous wastes. The Contractor shall sign the manifests and land ban records after writing or printing the phrase "On behalf of the United States Environmental Protection Agency" in the signature block. The Contractor shall not be considered a generator of hazardous wastes solely as a result of having signed the manifests or land ban records on behalf of EPA. Nothing contained in this paragraph shall be construed to create an agency relationship between the Contractor and EPA except with respect to the authorization to sign the manifests and land ban records. This authorization only extends to sites assigned under this contract. (b) This clause may be inserted in subcontracts. The contractor may delegate the authority set forth herein to its subcontractors.

(End of Clause)

EPA-H-11-105 Use of Company Owned or Affiliated Labs and Treatment Facilities

Prescription: Insert in Emergency Rapid Response Services (ERRS) contracts and other contracts as appropriate.

USE OF COMPANY OWNED OR AFFILIATED LABS AND TREATMENT FACILITIES

The On Scene Coordinator (OSC) or Remedial Project Manager (RPM), in conjunction with the Contracting Officer, shall determine the appropriateness of using company owned or affiliated laboratories. Such determinations shall be based on competition, site safety concerns, and the potential for an actual or apparent conflict of interest on the part of the Emergency Rapid Response Services (ERRS) contractor.

There are certain situations where the use of an ERRS company owned or affiliated laboratory and/or treatment facility would not be appropriate, such as in determining the extent of contamination and/or estimating volumes of material to be treated or disposed. When the ERRS contractor is conducting waste characterization analysis for purposes of waste identification and/or bulking options for off-site disposal, company owned laboratories may be utilized to conduct qualitative analysis. Under emergency response conditions, there may be instances where real time analytical support services from the company owned or affiliated laboratories are necessary and do not present a conflict of interest. Situations of this nature would be the real-time analysis of unstable hazardous waste materials to provide OSCs/RPMs with the necessary information to protect the public health and environment, as well as site personnel.

(End of Clause)

EPA-H-11-106 Salvageable Products

Prescription: Insert in all appropriate Superfund contracts.

SALVAGEABLE PRODUCTS

Salvageable products, and the proceeds derived from them, may become the property of the Government. If materials recovered from cleanup activities are salvageable, the Government may elect to have the contractor transport such recovered materials to an appropriate facility or directly to a commercial salvage company. If the Government elects to have the contractor deliver recovered materials to a commercial salvage company, the contractor shall obtain receipts for payment, and these payments shall be applied as a credit to the contract. If the balance of allowable contract costs is less than the credit for recovered materials, the contractor shall reimburse the Government for the difference.

(End of Clause)

EPA-H-11-107 Electrical Approval Requirement

Prescription: This clause (which is an RTP Facilities requirement) shall be used in all solicitations which require the purchase of electrical equipment for the EPA at RTP. This clause may be edited to update electric code reference(s). Included with the solicitation as attachments shall be the documents entitled (1) Electrical - Third-Party Agencies; (2) Electrical - Approval Requirements; and, (3) Equipment Categories.

ELECTRICAL APPROVAL REQUIREMENT

The National Electric Code, Sections 110-2, 110-3, and 90-7, requires all installed electrical equipment to be listed by a qualified electrical testing laboratory. For this system the laboratory must be a third party agency approved by the North Carolina Building Code Council to test and label electrical equipment. (See attachments to this solicitation for further information.) The system purchased under this solicitation must be listed with one of the approved agencies or an approved agency must perform a field inspection of the system. The price of the listing or the field inspection should be included in the offeror's cost proposal. If the equipment fails a field inspection, it is the offeror's responsibility to make any necessary changes to the system so that the system can be approved by the listing agency.

(End of Clause)

EPA-H-11-108 Survey Management Handbook

Prescription: The Contracting Officer shall insert this clause, or one substantially the same as this clause, in solicitations and contracts which require statistical surveys, data collection, using questionnaires, or statistical analysis of survey data.

SURVEY MANAGEMENT HANDBOOK

This contract will involve statistical surveys, data collection, using questionnaires, or statistical analysis of survey data. In performance of such tasks, the contractor shall follow the procedures

set forth in the EPA's handbook on survey management, which can be found at the following web site: [FILLIN#1#Insert URL Here]

(End of Clause)

EPA-H-13-101 Blanket Purchase Agreement Terms and Conditions

Prescription: Contracting Officers may use the subject clause (or one substantially the same as) in blanket purchase agreements awarded using FAR Part 13 simplified acquisition procedures.

BLANKET PURCHASE AGREEMENT TERMS AND CONDITIONS

(a) As provided in FAR 13.303-3(a) the following terms and conditions are included in this blanket purchase agreement:

(1) Description of agreement. [FILLIN#1# with a statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the Contracting Officer (or the authorized representative of the Contracting Officer) during a specified period and within a stipulated aggregate amount, if any]

(2) Extent of obligation. [FILLIN#2# with a statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA]

(3) Purchase limitation. [FILLIN#3# with a statement that specifies the dollar limitation for each individual purchase under the BPA]

(4) Individuals authorized to purchase under the BPA. [FILLIN#4# – with a statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the Contracting Officer.]

(5) Delivery tickets. All shipments under the agreement, except those for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips that shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) [FILLIN#5# choose one of the following four invoicing statements:

(i) “A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets,” or

(ii) “An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets,” or

(iii) “When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated, provided that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later,” (note: this statement should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method. In addition, this statement applies to (iii)(A) and (B), not just (iii)(B)), or

(iv) “An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.”]

(End of Clause)

EPA-H-15-101 Release of Cost or Pricing Proposals Outside the Government for Audit

Prescription: Include in any solicitation where offeror's cost or pricing proposal may be released outside of the government for audit.

RELEASE OF COST OR PRICING PROPOSALS OUTSIDE THE GOVERNMENT FOR AUDIT

Cost or pricing proposals submitted in response to this solicitation may be released outside the Government for audit purposes regardless of whether information contained in such proposals has been claimed or determined to be business confidential. If an outside audit is obtained, the non-Government auditor shall use the information only for audit purposes; shall not disclose any information in the proposals to anyone other than authorized EPA employees without the prior

written approval of the Assistant General Counsel responsible for information law matters; and shall return all copies of proposals, as well as any abstracts, to the Government upon completion of the audit. The non-Government auditor shall obtain a written agreement from each of its employees with access to the proposals to honor these limitations prior to allowing the employee access.

(End of Clause)

EPA-H-16-101 Ordering Under Multiple-Award Contracts

Prescription: The Contracting Officer may insert this clause or one substantially the same in multiple-award indefinite-delivery/ indefinite-quantity (ID/IQ) type contracts. Paragraph (j) may be tailored for non-Remedial Acquisition Framework contracts, and paragraphs (g) and (i) contain fill-ins.

ORDERING UNDER MULTIPLE-AWARD CONTRACTS

(a) *Procedures.* The Contracting Officer will follow the procedures of [FAR 16.505](#) in conjunction with the procedures in this section when placing task orders under this multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contract. The Contracting Officer has broad discretion in developing order placement procedures.

(b) *Fair Opportunity to be Considered.* In accordance with [FAR 16.505\(b\)\(1\)\(i\)](#), the Contracting Officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,500 issued under multiple-award task-order contracts, except as provided in [FAR 16.505\(b\)\(2\)](#).

(c) *Request for Offers.* To initiate a new task order, the Contracting Officer will issue a Request for Offers (RFO) to the multiple-award contract holders. At a minimum, an RFO will contain the following information:

- (1) RFO number;
- (2) RFO title;
- (3) Statement requesting an offer for services and/or construction, if applicable, to be performed;
- (4) Submission instructions for offers;
- (5) Evaluation procedures;
- (6) Task order statement of work (SOW)/performance work statement (PWS);
- (7) Task order terms and conditions if applicable;
- (8) Due date for offers; and
- (9) Any necessary attachments or supplemental information; e.g., Department of Labor wage determination.

(d) *Conflict of Interest Certification.* For each task order RFO, the Contractor shall search and report any actual or potential conflicts of interest within seven (7) calendar days of receiving the

task order RFO and must certify, to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that, to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist.

Upon award of a task order and thereafter, the Contractor has a continued obligation to search and report any actual or potential conflicts of interest throughout the life of the task order. In addition, the Contractor must certify that its personnel performing work under the task order, or relating to the task order, have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of the task order or other work relating to the site.

(e) *Submission of Offers.* The Contractor shall submit an offer in response to the RFO in accordance with the submission instructions provided in the RFO. Preparation of offers and revisions to those offers may not be charged directly to this contract. In the event a Contractor does not plan to submit an offer in response to a task order RFO, the Contractor shall notify the Contracting Officer by the offer due date and time.

(f) *Evaluation of Offers.* The Government will evaluate all offers received in accordance with the evaluation procedures in the RFO.

(g) *Task Order Award.* Following the evaluation of offers, the Contracting Officer will award a task order to the multiple-award Contractor whose offer represents the best value to the Government. The Contracting Officer will make award by issuing a task order on Optional Form 347. The Contractor shall acknowledge receipt of each task order within [FILLIN#1#calendar days] _____ calendar days of receipt.

(h) *Task Order Terms and Conditions.* The contract includes clauses that may be applicable on certain task orders and would need to be filled in depending on the task order requirements. The RFO will identify such clauses and the required information. Task orders may include optional periods and/or optional quantities. All special terms and conditions will be included in the RFO and task order.

(i) *Task Order Type.* This is an IDIQ contract for the supplies or services specified, and effective for the period stated, in the Schedule. [FILLIN#2#insert task order type(s)] _____ task orders may be written against this contract.

(j) *Competition in a Different Contract Line Item Number (CLIN).* When an exception to fair opportunity to be considered exists ([FAR 16.505\(b\)\(2\)](#)), or after providing each CLIN holder a fair opportunity to be considered for an order, the Agency may compete the task order under another CLIN due to project complexities, conflict of interest, capacity challenges, or other information indicates that the work can't be performed under the CLIN. In these situations, competition for the work may be conducted in one or both of the other CLINs if the expertise is available. If the Agency must use a different CLIN, firms under both the original CLIN and the

new CLIN(s) will be notified. Fair opportunity to be considered procedures will be followed in the new CLIN.

(k) *Task Order Ombudsman*. The Task Order Ombudsman for this contract is:

Name: Susan Moroni
 Address: 1200 Pennsylvania Avenue, N.W. 3801R
 Washington, D.C. 20460
 Telephone Number: (202) 564-4321
 Fax: (202) 564-2473
 E-Mail Address: Moroni.susan@epa.gov

(End of Clause)

EPA-H-17-101 Option for Increased Quantity – Term Form Segment

Prescription: Insert a clause substantially the same as the following when a Cost Reimbursement, Level of Effort contract is contemplated that includes option(s) for increased level of effort hours.

OPTION FOR INCREASED QUANTITY - TERM FORM SEGMENT

a) By issuing a contract modification, the Government may increase the estimated level of effort by:

(1) Base Period:

For the Term Form Segment, the Government may issue a maximum of ____ additional orders to increase the level of effort in multiples of ____ LOE direct labor hours during the Base Period for a maximum of ____ direct labor hours. The total number of direct labor hours ordered during the Base Period of the contract, including all optional quantities, shall not exceed ____ hours, except as provided in the Level of Effort clause in Section B.

(2) Option Period I:

For the Term Form Segment, the Government may issue a maximum of ____ additional orders to increase the level of effort in multiples of ____ direct labor hours during Option Period I for a maximum of ____ direct labor hours. The total number of direct labor hours ordered during Option Period I of the contract, including all optional quantities, shall not exceed ____ hours, except as provided in the Level of Effort clause in Section B.

(b) The estimated cost and fixed fee of each multiple of hours is as follows:

Estimated Base Period Cost Fixed Fee Total*

Year 1 \$ _____

Year 2 \$ _____

Year 3 \$ _____

Year 4 \$ _____

Year 5 \$ _____

Option Period Cost Fixed Fee Total*

Year 6 \$ _____

Year 7 \$ _____

Year 8 \$ _____
 Year 9 \$ _____
 Year 10\$ _____

(c) When these options are exercised, paragraph (a) of the "Level of Effort" clause and the "Estimated Cost and Fixed Fee" clause will be modified accordingly.

(d) If this contract contains "not to exceed amounts" for elements of other direct costs (ODCs), those amounts will be increased as follows:

Base Period ODCs*

Year 1 \$ _____
 Year 2 \$ _____
 Year 3 \$ _____
 Year 4 \$ _____
 Year 5 \$ _____

Option Period ODCs*

Year 6 \$ _____
 Year 7 \$ _____
 Year 8 \$ _____
 Year 9 \$ _____
 Year 10\$ _____

*Includes costs for both prime contractor and all team subcontractors.

(End of Clause)

EPA-H-17-102 Option for Increased Quantity – Subcontracting Pool

Prescription: Insert a clause substantially the same as the following when a Cost Reimbursement contract is contemplated that includes a subcontracting pool that can be increased by optional quantities.

OPTION FOR INCREASED QUANTITY - SUBCONTRACTING POOL

(a) Beginning with the base period and continuing in the option period, the Government has the unilateral right to increase the Subcontracting Pool as specified below. However, the Subcontracting Pool dollars can only be expended in the period specified.

(1) For the Base Period:

The Subcontracting Pool Portion of the contract may be increased in multiples of \$____, to a maximum of \$____. The Government may issue a total of ____ additional orders for optional quantities to increase the Subcontracting Pool ceiling during the Base Period of the contract. The total Subcontracting Pool dollars provided during the Base Period shall not exceed \$_____.

(2) For the Option Period:

The Subcontracting Pool Portion of the contract may be increased in multiples of \$____, to a maximum of \$____. The Government may issue a total of ____ additional orders to increase the Subcontracting Pool ceiling during the Option Period of the contract. The total Subcontracting Pool dollars provided during the Option Period shall not exceed \$_____.

(b) If the Government exercises any of these options, the following increases will be

incorporated into the contract:

Total Cost Plus Fixed Fee for each Contract Period

Base Period \$ _____

Option Period \$ _____

(c) When these options are exercised, the clause entitled "Estimated Cost and Fixed Fee" and the clause entitled "Subcontracting Pool for Site Specific Investigations and Construction Work (Term Form Segment)" will be modified accordingly.

(End of Clause)

EPA-H-17-104 Option for Increased Quantity – Completion Form Ceiling

Prescription: Insert a clause substantially the same as the following when a Cost Reimbursement contract is contemplated that includes a Completion Form segment with options to increase the Completion Form estimated cost and fee pool.

OPTION FOR INCREASED QUANTITY - COMPLETION FORM CEILING

(a) By issuing a contract modification, the Government may increase the completion form ceiling as follows:

(1) For the Base Period:

The ceiling in the Completion Form Segment of the contract may be increased in multiples of \$_____, to a maximum of \$_____. The Government may issue a total of _____ additional orders to increase the contract ceiling for the Completion Form Segment. The total dollar amount provided during the Base Period of the contract shall not exceed \$_____.

(2) For Option Period:

The ceiling in the Completion Form Segment of the contract may be increased in multiples of \$_____, to a maximum of \$_____. The Government may issue a total of _____ additional orders to increase the contract ceiling for the Completion Form Segment. The total dollar amount provided during the Option Period of the contract shall not exceed \$_____.

(b) If the Government exercises one of these options, the following increases will be incorporated into the contract:

Total Cost Plus Fixed Fee* for each Contract Period

Base Period \$ _____

Option Period \$ _____

*Fee to be negotiated in individual completion form work assignments. Per the clause in Section B entitled "Completion Form Ceiling," these ceilings will be modified to reflect agreements on cost/fee or price as completion form work assignments.

(c) When any of these options are exercised, the clauses in Section B entitled "Estimated Cost and Fixed Fee" and "Completion Form Ceiling" will be modified accordingly.

(d) The ceilings in this clause are applicable only to completion form work that might be ordered. These ceiling do not affect the level of work that the Government may issue as outlined in the clause "Level of Effort - Cost Reimbursement Term Contract."

(End of Clause)

EPA-H-22-101 Compliance with FAR Clause 52.222-43, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts)

Prescription: Use in solicitations containing FAR clause 52.222-43, *Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts)*.

COMPLIANCE WITH FAR CLAUSE 52.222-43, FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)

Offerors are reminded that in accordance with FAR Clause 52.222- 43, "Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts)", offerors must warrant that the prices in this contract for labor categories subject to prevailing wage determinations and collective bargaining agreements do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause. Offerors shall not include escalation for direct labor and fringe costs for the option years for these covered labor categories in their proposals. In accordance with FAR 52.222-43, during contract performance, the contract price or fixed labor rates will be adjusted to reflect the successful offeror's actual increase or decrease in applicable wages and fringe benefits.

(End of Clause)

EPA-H-23-101 Environmentally Preferable Practices

Prescription: Insert in solicitations/contracts where the contractor will be utilizing environmentally preferable practices.

ENVIRONMENTALLY PREFERABLE PRACTICES

The contractor shall, to the greatest extent practicable, utilize environmentally preferable practices in its course of business. "Environmentally preferable" is defined as products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. Consideration of environmentally preferable practices must be consistent with price, performance, availability, and safety conditions.

(End of Clause)

EPA-H-25-101 Compliance with International Laws and Regulations

Prescription: Insert in contracts which will require contractor to provide services on either side of the U.S./Mexico board and/or any other international border.

COMPLIANCE WITH INTERNATIONAL LAWS AND REGULATIONS

The contractor shall be responsible for compliance with all relevant international laws and regulations while performing efforts under this contract in another country (i.e. Mexico), including licensing requirements, transportation, etc. The contractor may be subject to international laws and/or the laws of the country which work is being performed.

(End of Clause)

EPA-H-27-101 Data

Prescription: Insert in solicitations/contracts as applicable.

DATA

Upon receipt of all data provided to the Government by the contractor under this paragraph, the Government shall acknowledge in writing to the contractor the receipt of all confidential or other data.

(b) With regard to all copies of data specifically requested by the Government and supplied in response thereto by the contractor under the contract clause entitled "Additional Data Requirements," the contractor may, pursuant to said clause, be entitled to an equitable adjustment to cover the cost of collecting, preparing, editing, duplicating, assembling, and shipping the data requested.

(c) The Contractor may be required to turn over or provide to the Government any of the following:

1. Financial, administrative, cost and pricing and management data, or other information incidental to contract administration, pursuant to the clause entitled "Rights in Data-General." Such financial, cost or pricing data does not refer to site-specific cost records which are necessary to substantiate cost recovery actions.
2. Contractual agreements for supplies or services. (This exclusion does not apply to: 1) data resulting from such services, or 2) subcontracts issued in order to support site activity which are reimbursed through this contract.)
3. Contractor and personnel performance ratings and evaluations.
4. Data previously developed by parties other than the contractor which was acquired independently of this contract, or acquired by the contractor prior to this contract under conditions restricting the contractor's right to such data. (d) The contractor shall deliver to the OSC, within ninety (90) calendar days after the completion of the task order period of performance, all site-related data including, but not limited to: reference materials, source lists,

field notes, log books, chemical data, maps, photographs, and other site-specific documents which are necessary to substantiate cost recovery actions.

(End of Clause)

EPA-H-27-102 Confidentiality of Information

Prescription: Include in any contract where the contractor may be provided information considered to be confidential (other than CBI) in order to perform required services

CONFIDENTIALITY OF INFORMATION

Any data that is generated or obtained during contract performance shall be considered confidential, and shall not be disclosed to anyone other than Environmental Protection Agency employees without the prior written approval of the Contracting Officer. Nor shall any such data be used for any other purpose except in connection with this contract. Any data generated or obtained during contract performance shall be delivered to the Government at the request of the Contracting Officer.

(End of Clause)

EPA-H-27-103 Application of Rights in Data – Special Works Clause

Prescription: The Contracting Officer shall insert this clause in solicitations and contracts where work will be ordered by work assignment or by task orders, and that contain FAR clause 52.227-17.

APPLICATION OF RIGHTS IN DATA--SPECIAL WORKS CLAUSE

The Rights in Data--Special Works clause (FAR 52.227-17) shall apply to work assignments or task orders "...that are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's own use..." or when the Contracting Officer determines that there is a specific need to limit data distribution first produced under a particular work assignment or task order. The Rights in Data--Special Works clause (FAR 52.227-17) shall apply to work assignments or task orders which are included in the examples set forth in FAR 27.405(a)(1) and also to other work assignments or task orders specifically identified by the Contracting Officer.

(End of Clause)

EPA-H-28-101 International Insurance

Prescription: Insert in contracts which will require contractor to provide services on either side of the U.S./Mexico board and/or any other international border.

INTERNATIONAL INSURANCE

The contractor is responsible for obtaining all insurance requirements for efforts on either side of the U.S./Mexico border and/or any other international border. The contractor shall obtain all of the necessary insurance (i.e. general liability, vehicle liability, health liability, etc.) for work done across the U.S./Mexico or any other international border through a government-approved carrier (government of the country for which work is being performed).

(End of Clause)

EPA-H-28-102 Minimum Insurance Requirements

Prescription: Include in any SF contract which includes FAR clause 52.228-7, *Insurance--Liability to Third Persons*.

MINIMUM INSURANCE REQUIREMENTS

As described in FAR 52.228-7, *Insurance--Liability to Third Persons*, the following are the minimum amounts of insurance required under the contract:

Workers compensation and employer's liability- \$1,000,000
Comprehensive general liability- \$1,000,000
Comprehensive automobile liability- \$1,000,000

(End of Clause)

EPA-H-28-103 Submission of 3rd Party Insurance Certificates

Prescription: Insert in solicitations/contracts containing FAR clause 52.228-7, *INSURANCE - LIABILITY TO THIRD PERSONS*.

SUBMISSION OF 3RD PARTY INSURANCE CERTIFICATES

Within ____ days of contract award offerors shall submit copies of their insurance certificates for the coverages identified in FAR clause 52.228-7, *INSURANCE - LIABILITY TO THIRD PERSONS*. Certificates will be evaluated on an acceptable or not acceptable basis by the Contracting Officer.

(End of Clause)

EPA-H-28-104 Performance and Payment Bonds

Prescription: Include the following clause in all contracts that may include construction exceeding the simplified acquisition threshold.

PERFORMANCE AND PAYMENT BONDS

The Miller Act requires that the prime Contractor obtain performance and payment bonds on substantial and segregable construction exceeding the simplified acquisition threshold under this contract. When required by the prime Contractor and approved by the Contracting Officer, the prime Contractor may be permitted to fulfill this requirement by requiring that the subcontractor furnish the bonds with the United States named as the obligee on the bond. In that event, it is hereby mutually agreed that there is no intent for the prime Contractor to merely act as the Government's purchasing agent, and that this contract shall not be construed as a facilities management contract. It is further agreed that the privity of contract between the prime and subcontractor, and the responsibilities of each, is not affected in any way by permitting the subcontractor to provide Miller Act bonds in lieu of the prime Contractor.

(End of Clause)

EPA-H-28-105 Workers Compensation, Employers Liability, General Liability, and Auto

Prescription: The Contracting Officer shall insert this clause, or one substantially the same as this clause, in contracts that contain FAR 52.228-7 or as appropriate. The clause may be modified to address other items listed in FAR 28.307-2, such aircraft and vessel liability or to address changes to minimum dollar values for coverage.

WORKERS COMPENSATION, EMPLOYERS LIABILITY, GENERAL LIABILITY, AND AUTO

(a) As required by the clause entitled, "Insurance--Liability to Third Persons" (FAR 52.228-7), the contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance. Minimum protection shall be in amounts not less than those prescribed below:

- (1) Bodily Injury - Minimum of \$500,000 per occurrence
- (2) Property Damage - Minimum of \$100,000 per occurrence, \$200,000 in the aggregate
- (3) Automobile Liability - Minimum of \$200,000 per person and \$500,000 per occurrence for bodily injury, and \$20,000 per occurrence for property damage.

(b) Satisfactory proof of binder by an acceptable insurer shall be furnished to the Contracting Officer prior to commencement of work.

(End of Clause)

EPA-H-28-106 Insurance – Work on a Government Installation

Prescription: The Contracting Officer shall insert this clause, or a clause substantially the same as this clause, in solicitations and contracts that require work on a Government installation.

INSURANCE--WORK ON A GOVERNMENT INSTALLATION

The Contractor's insurance requirements of Clause 52.228-5, Insurance--Work on a Government Installation (JAN 1997), shall be as follows:

At a minimum, the Contractor shall procure and maintain the following types and amounts of insurance:

- (1) Workmen's compensation and occupational disease insurance in amounts sufficient to satisfy Federal and State laws;
- (2) Employer's liability insurance of at least \$100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers;
- (3) General liability insurance for bodily injury liability coverage written on the comprehensive form of policy of at least \$500,000 per occurrence; and
- (4) Automobile liability insurance written on the comprehensive form of policy providing for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of the contract of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(End of Clause)

EPA-H-31-102 Final Reconciliation of Costs

Prescription: The Contracting Officer shall insert this clause, or a clause substantially the same as this clause, in solicitations and contracts that require work on a Government installation.

FINAL RECONCILIATION OF COSTS

Upon completion of the last contract period and resolution of the final annual incurred cost submission, or upon Contracting Officer request, the Contractor will be required to:

- (a) Submit to the EPA Contracting Officer a Final Cumulative Claim and Reconciliation, by task order if requested by contracting officer. This submission will be compared to the results of the resolved annual incurred cost submissions and a "Final Invoice" will be submitted with payment due to or by the Contractor in accordance with paragraph (e) of the Section G Clause "PAYMENTS--FIXED-RATE SERVICES CONTRACT" (EPAAR 1552.232-73).
- (b) Execute a "release statement" and a "refund statement" in accordance with paragraphs (f) and (g) of the Clause "PAYMENTS--FIXED-RATE SERVICES CONTRACT" which will be incorporated into the contract closeout modification.

(End of Clause)

EPA-H-31-103 Limitation on Reimbursement for Rental Equipment

Prescription: The Contracting Officer may include this clause, or one substantially the same as this clause, in any contract which includes fixed rates for equipment which may be provided for through a third party subcontract or short-term rental/lease.

LIMITATION ON REIMBURSEMENT FOR RENTAL EQUIPMENT

- (a) If a fixed rate for equipment has been included in the contract but the contractor provides that equipment through a third-party subcontract or short-term rental/lease, reimbursement for that equipment shall be at cost plus any applicable indirect costs not to exceed the fixed rate specified in the contract for that item for the prime contractor or team subcontractor, depending upon which (prime contractor or subcontractor) leases or rents the equipment.
- (b) If it is determined by the contracting officer to be in the best interest of the Government to suspend this limitation, reimbursement for rented/leased equipment may be at a cost which exceeds the fixed rate. Such determinations shall be made on a case-by-case basis. A request for approval of a higher cost shall be made by the contractor in writing to the contracting officer in advance of charging the higher rate. Written documentation supporting the request shall include the description of the item, CLIN number, proposed cost, an explanation of why the contractor is proposing to rent/lease the equipment, and such other information as necessary for the contracting officer to evaluate the proposal.
- (c) In the event of an emergency, the On-Scene Coordinator (OSC) may approve a higher rate, with written documentation to be forwarded by the contractor to the contracting officer through the OSC within ten (10) calendar days thereafter. In addition to the information required in the preceding paragraph, details on the nature of the emergency shall be included.
- (d) The final determination on reimbursement for rented/leased equipment for which the contract includes a fixed rate shall be the responsibility of the contracting officer, except in an emergency, during which the OSC's approval shall be accepted until the emergency situation is stabilized, provided the required documentation is submitted to the contracting officer within the time specified above.
- (e) In determining the allowability of reimbursement for the cost of rented/leased equipment for which the contract includes a fixed rate and which results in a cost in excess of the fixed rate, the Government may consider incremental charges incurred in connection with rental equipment for excessive usage and peak seasons during which time all of the contractor's owned equipment is dedicated to other EPA sites. The Government may also take into consideration instances where the contractor's equipment has been in use on a long-term basis on non-EPA jobs before being required by EPA, and the length of the EPA job.

(End of Clause)

EPA-H-31-104 Approval of Contractor Travel

Prescription: The contracting officer may insert the following clause, or one substantially the same as this clause, in solicitations and contracts (including, but not limited to, cost-reimbursement, time-and-materials, and fixed-rate contracts) which anticipate the need for directly charged cost-reimbursable contractor travel in the performance of contract requirements.

APPROVAL OF CONTRACTOR TRAVEL

(a) For purposes of this clause, the term "travel" does not include local transportation. "Local Transportation" is defined as travel within 50 miles from the contractor personnel's assigned work location for performance of the contract that does not involve an overnight stay.

(b) Any contractor travel which may be directly charged to the contract must be authorized in advance by the Contract-Level COR. This approval shall be separate from the process associated with the approval of work plans. (See paragraph (f) below).

(c) Travel shall be authorized under this contract only when the travel is required to provide a direct service (including management oversight) or specific product to the Government that is identified in the contract's Statement of Work (and/or any applicable work assignment). The contractor shall identify the need for travel in any work plans submitted and shall clearly identify in an accompanying narrative the relationship of the travel to the direct service required by the Government. Unless/until the Contract-Level COR specifically approves the travel proposed under a work assignment (apart from approval of the remainder of the work assignment- see paragraph (e) below), the contractor shall not perform travel. Travel and associated costs for such travel (lodging, per diem, and incidental expenses) shall be allowable only in accordance with the limitations of FAR 31.205-43 and FAR 31.205-46.

(d) Travel expenses for Federal employees shall not be an allowable cost under this contract. Travel approval shall not be rendered for any personnel (including for example State or local government officials, academicians, etc.) except for employees of the contractor, or an authorized subcontractor or consultant, who are performing a bona fide function to accomplish the Statement of Work.

(e) To obtain the approval for travel, the contractor shall submit a separate written request to the Contract-Level COR for each instance of travel for the contractor (including subcontractors/consultants) that is contemplated as a direct charge under the contract. The request shall include (at a minimum) the following information:

(1) Individual(s) traveling. Identify position and affiliation as a contractor/subcontractor employee or authorized consultant.

(2) Description of circumstances necessitating the travel. Identify the work assignment(s) that will benefit from the travel and detail the correlation of the travel to the requirements of the Statement of Work.

(3) Identify the estimated cost and include a cost breakdown. Explain why this is the most cost effective means to fulfill the contract requirements.

(f) Approval of work plans that include travel as an other direct cost element shall not be construed to mean the travel is approved; i.e., separate approval shall be obtained from the Contract-Level COR.

(g) While on travel, Contractor personnel shall clearly identify corporate affiliation at the start of any meeting. While attending EPA-sponsored meetings, conferences, symposia, etc. or while on a Government site, Contractor personnel shall wear a badge which identifies the individual as a contractor employee. Contractor personnel are strictly prohibited from acting as an official representative of the Agency at meetings, conferences, symposia, etc.

(End of Clause)

EPA-H-31-105 Approval of Training

Prescription: The contracting officer may insert the following clause, or one substantially the same as this clause, in Cost Reimbursement and Time and Materials solicitations and contracts as deemed appropriate.

APPROVAL OF TRAINING

(a) The contractor shall provide and maintain a qualified staff of personnel to meet the requirements of the Statement of Work. The contractor shall provide training to keep its personnel abreast of changes to the science and/or technology associated with the requirements of the contract. In addition, the contractor shall ensure that its personnel receive appropriate safety, health and environmental training in accordance with Federal, state and local requirements prior to assigning any task that require such training. The contractor shall provide documentation of such training upon the request of the Contract-Level COR and/or Contracting Officer.

The Government will not directly reimburse the cost for contractor employees to meet or maintain minimal contract requirements or to obtain and sustain an appropriate level of professionalism. Any direct charges for training will only be considered for reimbursement under this contract by compliance with the procedures set forth in paragraph (b) below.

(b) There may be occasions when it is determined to be in the best interest of the Government to reimburse the contractor for the direct cost of training associated with a requirement that represents a unique Government need unrecognized at the time of contract award. When such circumstances occur, the contractor shall secure the Contracting Officer's prior written approval by submitting a written request through the Contract-Level COR that includes, at a minimum the following information:

- (1) Individual to be trained [FILLIN#1#Identify position and job duties under contract].
- (2) Description of circumstances necessitating the training. [FILLIN#2#Describe the specific change to the performance requirements. Identify by number and title of the work assignment(s)]

that will benefit from training and describe in detail how the training relates to the Statement of Work and job duties under the contract].

(3) Estimated cost [FILLIN#3#Include a cost breakdown. Explain why this is the most cost effective means to fulfill the contract requirements].

(c) The Contracting Officer will provide the contractor with written approval or disapproval of the request. Approval of work plans that include training as an other direct cost element shall not be construed to mean the training is approved; i.e., the contractor shall obtain written approval pursuant to the terms of this clause. Training billed as a direct cost shall be disallowed by the Contracting Officer unless approved pursuant to the terms of this clause.

(End of Clause)

EPA-H-31-106 EPA-Sponsored Meetings, Workshops, and/or Conferences

Prescription: The Contracting Officer may insert this clause, or one substantially the same as this clause, in solicitations and contracts that will require EPA-sponsored meetings, workshops, and/or conferences.

EPA-SPONSORED MEETINGS, WORKSHOPS, AND/OR CONFERENCES

If this contract requires contractor support for an EPA-sponsored meeting, workshop, conference, etc., the following shall apply:

EPA meetings shall be held in Federal facilities whenever available. The EPA Contract-level Contracting Officer's Representative (COR) or Work Assignment COR will determine and advise the contractor as to the availability of Federal facilities.

The allowability of travel costs for contractor personnel and experts, consultants and others hired under subcontracts to provide services to EPA shall be determined under Part 31 of the Federal Acquisition Regulation. The cost of travel, food, lodging, etc., for other conference attendees, including trainees, shall not be an allowable cost under this contract. Travel costs must be approved by the COR.

(End of Clause)

EPA-H-37-101 Expert Testimony

Prescription: The contracting officer shall insert, as appropriate, a clause substantially the same as this clause in contracts, such as enforcement actions, which may require expert testimony by the contractor or its personnel as to their performance under the contract.

EXPERT TESTIMONY

On occasion, the Government may have the need for expert and non-expert testimony during enforcement proceedings for a given site where the contractor provided services. Such effort shall be considered within the scope of this contract. The individual(s) selected to testify shall be fully knowledgeable of the details of the site under litigation, shall be credible, and shall, if necessary, be an expert in the field. The testimony shall normally relate to what actions the contractor took at a site. Preparation of affidavits and depositions may be required. If the effort is required during contract performance, a negotiated supplemental agreement will be issued under the contract. In the event such services are required after performance of this contract, a separate negotiated procurement action may be initiated with the Contractor.

(End of Clause)

EPA-H-39-101 Contractor Access to EPA Computers

Prescription: Insert this clause in all solicitations and contracts where contractor access to EPA computers is required.

CONTRACTOR ACCESS TO EPA COMPUTERS

The personnel listed below have been authorized access to EPA computers in the performance of this contract. In the event of changes to this listing through a reassignment, resignation, termination, completion of a task or any other reason making such access unnecessary, the Contractor shall immediately notify the Contracting Officer.

[FILLIN#1# List of personnel with authorization to access EPA computers]

(End of Clause)

EPA-H-39-102 Notification of Personnel Requiring Access to EPA Computers

Prescription: Insert this provision in all solicitations where contractor access to EPA computers is required.

NOTIFICATION OF PERSONNEL REQUIRING ACCESS TO EPA COMPUTERS

As a part of its proposal, the offeror shall include a listing of those personnel who will require access to EPA computers in the performance of the anticipated contract. See the "Access to EPA Computers" clause for additional information regarding computer access.

(End of Provision)

EPA-H-42-101 Annual Allocation of Non-Site-Specific Costs

Prescription: Use the Annual Allocation of Non-Site-Specific Costs Clause (and the corresponding Attachment) in solicitations and contracts that will incur costs associated with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

(Superfund), including those associated with investigating or cleaning up hazardous waste sites or spills. Paragraphs (b) and (c) of this clause may be changed to update contact information.

ANNUAL ALLOCATION OF NON-SITE-SPECIFIC COSTS

(a) The contractor shall submit an annual allocation report. The purpose of this report is to allocate all payments made by the EPA to the contractor for non-site-specific activities to the sites worked on by the contractor during the accounting year. Examples of non-site-specific activities include program management, contract fees (base, fixed, and award), and other tasks required of the contractor for non-site-specific work.

(b) The contractor shall refer to Attachment [FILLIN#1#Attachment Name] of the contract, entitled "Instructions for Performing the Annual Allocation of Non-Site-Specific Costs" for instructions for completing the annual allocation report requirements. This Attachment also provides a detailed explanation of the allocation process and methodology.

(c) Submissions required of the contractor shall be sent to the following address:

Program Costing Staff
Office of Financial Management
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Ronald Reagan Building, MC 2733R
Washington, DC 20460

(d) Questions regarding any Annual Allocation requirements should be referred to the Program Costing Staff at (202) 564-3145.

(End of Clause)

EPA-H-42-102 Utilization of FedConnect for Contract Administration

Prescription: Contracting officers shall include the subject clause in contracts which use the FedConnect web portal to administer the contract.

UTILIZATION OF FEDCONNECT FOR CONTRACT ADMINISTRATION

EPA will utilize the FedConnect web portal in administering this contract. The contractor must be registered in FedConnect and have access to the FedConnect website located at <https://www.fedconnect.net/Fedconnect/>. For assistance in registering or for other FedConnect technical questions please call the FedConnect Help Desk at (800) 899-6665 or email at support@fedconnect.net.

(End of Clause)

EPA-H-42-103 Temporary Closure of EPA Facilities

Prescription: The CO shall insert the subject clause, or a clause substantially similar to the subject clause, in all solicitations and contracts where contractor personnel will be working on-site in an EPA facility, unless the contract states it has been determined to be mission critical, and therefore the EPA facility needs to remain open (for instance, if the preaward documentation identified the contract as mission critical and it is written in the contract statement of work).

TEMPORARY CLOSURE OF EPA FACILITIES

(a)(1) The Environmental Protection Agency observes the following days as federal holidays. The term "Federal holidays" as used in this clause shall mean only the following enumerated days and any other days hereafter declared National holidays by the President of the United States. Holidays falling on a Sunday will be observed on the following Monday. Holidays falling on a Saturday will be observed on the preceding Friday.

January 1 - New Year's Day
 January - Third Monday - Martin Luther King Day
 February - Third Monday - Washington's Birthday
 May - Last Monday - Memorial Day
 July 4 - Independence Day
 September - First Monday - Labor Day
 October - Second Monday - Columbus Day
 November 11 - Veterans Day
 November - Fourth Thursday - Thanksgiving Day
 December 25 - Christmas Day

(2) Holiday observances of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the Contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in the contract.

(b)(1) EPA may close an EPA facility for all or a portion of a business day as a result of:

- (i) Granting administrative leave to non-essential EPA employees (e.g., unanticipated holiday);
- (ii) Inclement weather;
- (iii) Failure of Congress to appropriate operational funds;
- (iv) Any other day designated by Federal law, Executive Order or Presidential Proclamation; or
- (v) Other reason as determined by the EPA (e.g., designated furlough day for federal workers).

(2) In such cases, Contractor personnel not determined by the Contracting Officer to be excepted (e.g., not performing mission-critical round-the-clock services/tasks) who are not already on duty at the facility shall not report to the facility. Such Contractor personnel already present shall be dismissed and shall leave the facility.

(3) The Contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of mission-critical services/tasks already in operation or scheduled for performance during the period in which EPA employees are dismissed, and shall be guided by any specific

instructions of the Contracting Officer or his/her duly authorized representative. In formulating instructions the Contracting Officer or authorized representative may consider recommendations from regional/local EPA facilities management/operations staff.

(c) When Contractor personnel services are not required or provided due to closure of an EPA facility as described in paragraph (b), the contract price will be adjusted as follows:

(1) For fixed-price contracts, deductions in the Contractor's price will be computed as appropriate for the particular firm fixed price contract in question, e.g.,

(i) The deduction rate in dollars per day will be equal to the per-month contract price divided by 21 days per month.

(In this example, the 21-days-per-month figure was calculated as follows:

$365 \text{ calendar days/year} - 10 \text{ Federal holidays} - 104 \text{ Saturdays/Sundays} = 251 \text{ days/12 months} = 20.92 \text{ days/month, rounded up to 21 days/month}$)

(ii) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided. If services are provided for portions of days, appropriate adjustment will be made by the Contracting Officer to ensure that the Contractor is compensated for services provided.

(2) For cost-reimbursement, time-and-materials and labor-hour type contracts, EPA shall not reimburse, as direct costs, salaries or wages of Contractor personnel for the period during which such personnel are dismissed from, or do not have access to, the facility.

(d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site unless otherwise instructed by the Contracting Officer.

(End of Clause)

EPA-H-42-104 Technical Direction Documents

Prescription: Contracting Officers and other warranted officials shall include the clause in all Superfund acquisitions where the cognizant CO determines that Technical Direction Documents (TDDs) are necessary. The acquisition include Indefinite Delivery/Indefinite Quantity and other Contracts, Task Orders, Delivery Orders, Purchase Orders, Blanket Purchase Agreements, Basic Ordering Agreements, etc..

TECHNICAL DIRECTION DOCUMENTS

(a) The Contractor shall perform work under this contract as specified in the written Technical Direction Documents (TDD) issued against Task Orders by the Contracting Officer (CO). The TDDs will be issued electronically via the EPA's Acquisition System (EAS) system, a web based system. All TDDs issued will be within the scope for the services specified in each TO, and will be in accordance with the fixed rates specified elsewhere in this contract.

(b) Warranted by an emergency, a TDD may be issued verbally under this contract. The Contractor shall begin work immediately upon receipt of a verbally-issued TDD. A written TDD must then be issued within five (5) calendar days from when the verbal TDD was issued by the CO. The written TDD shall indicate the date and time on which the TDD was verbally issued. Failure to follow-up a verbally issued TDD in writing may result in work stoppage.

(c) If the purpose of a TDD is to revise efforts specified by a previous TDD, the CO will specifically reference the prior TDD and the effort being revised. The COR is required to submit this information to the CO.

(d) The Contractor shall acknowledge receipt of each TDD by returning a signed copy of the TDD to the CO within two (2) business days after its receipt. If the Contractor considers the specified completion date or hours to be unreasonable or unrealistic for the required effort, the contractor shall notify the CO before signing the TDD.

(e) For any TDD issued which requires preparation by the Contractor of a project work plan and cost estimate, the TDD will outline the details for the submission of the project.

(f) Each work plan may/will include the following:

- (1) Numerical designation of the TDD issued
- (2) The estimated labor hours
- (3) Estimated dollar amount for approval
- (4) Source of funds as provided in the TDD (i.e., CERCLA, OPA, CEPP, other)
- (5) EPA 4 digit Site Identification Number as provided (SSID)
- (6) Site name, address, city, county, state and Zip code
- (7) Overtime if applicable
- (8) Period of performance (PoP)
- (9) Descriptive title to tasks as provided in the Statement of Work (SOW)/Performance Work Statement (PWS)
- (10) Specific tasks, including the anticipated end product(s)
- (11) Interim deadlines, including completion dates for each specific effort
- (12) Comments
- (13) Signatures and dates
- (14) Descriptor (for Contractor use)
- (15) Distribution (The CO, OSC and the Project Officer (PO) shall be included on the distribution of all TDDs issued under-this contract)
- (16) Reference Statement of Work or Performance Work Statement
- (17) Conflict of Interest Search
- (18) Schedule of deliverables

(g) Within 30 days of completion of all tasks within a given TDD, the Contractor shall submit via email a final Acknowledgment of Completion (AOC) form to the CO and the PO for approval. AOCs shall include the following information:

- (1) Project Name

- (2) TDD Number and if applicable amendments
- (3) Brief description of project
- (4) Period of Performance (PoP)
- (5) Response Type (e.g., pre-remedial, etc.)
- (6) Estimated Cost Approved
- (7) Actuals Incurred
- (8) Contractor Comments
- (9) COR/OSC/PO as applicable, Comments
- (10) PO Signature Line and Date
- (11) Authorized Contractor Signature and Date
- (12) Distribution

(h) The PO or any other technical representative of the CO, such as the non-warranted OSC or authorized COR, does not have the authority to issue any TDD which (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the “Changes” clause; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the contract period of performance; or, (5) changes any of the other express terms or conditions of the contract. Any requests for deviation from the terms of this contract, or any TDD issued hereunder, must be submitted to the CO for contractual action, except as otherwise authorized in this clause.

(i) The Contractor shall not make expenditures or incur obligations in the performance of the TDD which exceed the specified ceiling amount or completion date except at the contractor’s own risk. Any increase to the ceiling amount or extension of time must be authorized by the CO in a written amendment to the TDD, except as otherwise authorized in this clause.

(j) The Government is obligated to make payment only for work actually completed regardless of any estimates of prospective quantities.

(k) Nothing contained in this contract shall prohibit the Government from placing other orders or contracts for this or similar services.

(End of Clause)

EPA-H-42-105 Ordering Work for Technical Direction Documents

Prescription: Contracting Officers and other warranted officials shall include the clause in all Superfund acquisitions where the cognizant CO determines that Technical Direction Documents (TDDs) are necessary. The acquisition include Indefinite Delivery/Indefinite Quantity and other Contracts, Task Orders, Delivery Orders, Purchase Orders, Blanket Purchase Agreements, Basic Ordering Agreements, etc..

ORDERING WORK FOR TECHNICAL DIRECTION DOCUMENTS

(a) Work will be ordered via Task Orders (TO) and Technical Direction Documents (TDDs). TOs for the following major categories of the Performance Work Statement may be issued under the contract:

- (1) Response Activities
- (2) Preparedness and Prevention Activities
- (3) Assessment/Inspection Activities
- (4) Technical Support Activities
- (5) Data Management Support
- (6) Training
- (7) Other task orders will be assigned as the need arises.

(b) Specific details for individual assignments may be issued under each TO via a TDD. For an example, a TO will be issued for Response Activities, specific emergency response or removal sites that fall will be assigned by individual TDDs. The TDD will specify the site, deliverables and due dates, and period of performance in accordance with the requirements of the TDD clause.

(c) TO for Response Activities shall include the fixed rate for the responders. Individual TDDs assigned under this TO will specify emergency response, EPA drills/exercises, and removal work as assigned to the contractor.

(d) For work performed under any TO that require more effort than the labor categories identified in the contract, the contractor will be reimbursed out of the specialized labor pool, in accordance with the section B clause entitled "SPECIALIZED LABOR." The contractor shall notify the Contracting Officer and Project Officer in advance of utilizing any specialized labor.

(End of Clause)

EPA-H-42-106 Emergency Response

Prescription: Contracting Officers and other warranted officials shall include the clause in all Superfund acquisitions where the cognizant CO determines that Technical Direction Documents (TDDs) are necessary. The acquisition include Indefinite Delivery/Indefinite Quantity and other Contracts, Task Orders, Delivery Orders, Purchase Orders, Blanket Purchase Agreements, Basic Ordering Agreements, etc..

EMERGENCY RESPONSE

(a) During an emergency response, the contractor shall only assign qualified personnel, experienced in working in all levels of protection as defined in 29 CFR 1910.120.

(b) The contractor shall designate a site lead and one alternate who are expressly familiar with the requirements of the assignment. A staffing plan may be required on an individual TDD. The plan should identify the number and kinds of disciplines proposed for the work required and submitted to the Contracting Officer (CO) and the Project Officer (PO) or OSC within ____

calendar days of receipt of the assignment. Whenever a staffing plan is required, work cannot begin until the plan is approved by the contracting officer.

(End of Clause)

EPA-H-42-107 Other Than Emergency Response

Prescription: Contracting Officers and other warranted officials shall include the clause in all Superfund acquisitions where the cognizant CO determines that Technical Direction Documents (TDDs) are necessary. The acquisition include Indefinite Delivery/Indefinite Quantity and other Contracts, Task Orders, Delivery Orders, Purchase Orders, Blanket Purchase Agreements, Basic Ordering Agreements, etc..

OTHER THAN EMERGENCY RESPONSE

(a) A staffing plan shall be submitted and approved for all assignments other than emergency response work. The plan should identify the number and kinds of disciplines proposed for the work required and submitted to the Contracting Officer (CO) and Project Officer (PO) or OSC within 5 calendar days of receipt of the assignment.

(b) In performing any task in the Performance Work Statement, the contractor shall not substitute personnel working on any site or assignment without the advance approval from the CO, Warranted EPA On-Scene Coordinator.. It is the responsibility of the contractor to provide the substituted personnel with all of the site information necessary to complete the work without delays. It is expected that the contractor will provide at least 2 a week notice to EPA to transition new, qualified personnel to an existing assignment and that any transition will be done at the contractor's expense.

(End of Clause)

EPA-H-42-108 Work Plans at the Task Order and Technical Direction Document (TDD) Level

Prescription: Contracting Officers and other warranted officials shall include the clause in all Superfund acquisitions where the cognizant CO determines that Technical Direction Documents (TDDs) are necessary. The acquisition include Indefinite Delivery/Indefinite Quantity and other Contracts, Task Orders, Delivery Orders, Purchase Orders, Blanket Purchase Agreements, Basic Ordering Agreements, etc..

WORK PLANS AT THE TASK ORDER AND TECHNICAL DIRECTION DOCUMENT (TDD) LEVEL

(a) A work plan may be required under a TO or TDD. When a work plan is required and the TDD has been accepted, the contractor shall submit a proposed staffing Page H- of the XXX-XX-XX-XXX plan, estimated travel, subcontracts and other direct costs necessary to complete the assignment.

(b) The work plan shall be submitted to the EPA assignor and the Contracting Officer (CO) by the due date established in the TDD. Work shall not begin until the work plan has been approved by the Contracting Officer or the EPA official in accordance with the section G clause entitled "ORDERING-BY DESIGNATED ORDERING OFFICERS."

(c) The negotiated costs shall serve as a ceiling amount for the TDD and shall not be exceeded without the prior written authorization of the CO. Any costs beyond the ceiling or completion dates will be disallowed for payment.

(End of Clause)

EPA-H-44-101 Team Subcontractor Agreements

Prescription: Insert in solicitations/contracts where team subcontractor agreements are contemplated/utilized.

TEAM SUBCONTRACTOR AGREEMENTS

The contractor shall provide, within five (5) calendar days of award notice, one copy of each proposed team subcontract agreement, when applicable, to the Contracting Officer. A copy of the executed team subcontract and any subsequent modifications shall also be provided to the Contracting Officer within 10 days of execution.

(End of Clause)

EPA-H-44-102 Identification of Subcontractors

Prescription: The Contracting Officer may insert this clause, or one substantially the same as this clause, in cost-reimbursement contracts under which the award decision was based in part on subcontractor information that was included as a part of the Contractor's technical proposal.

IDENTIFICATION OF SUBCONTRACTORS

(a) The purpose of this clause is to identify the subcontractors in the Contractor's proposal which resulted in award of this contract.

(b) Notwithstanding FAR clause 52.244-2, Alt. I, of this contract entitled "Subcontracts", it is hereby agreed to and understood that the following "team subcontractors" will perform the work under this contract as outlined in the Contractor's technical proposal incorporated in Section C of this contract:

[FILLIN#1#Subcontractor] [FILLIN#2# Est. Amount of Total Potential Subcontract]

(c) Any substitutions in the above listing of subcontractors which will result in a deviation from the Contractor's technical proposal which resulted in award of this contract shall be approved in writing by the Contracting Officer in advance of the substitution. The Contractor shall provide a

detailed explanation of the circumstances necessitating the proposed substitutions, information required by the clause of this contract entitled "Subcontracts" and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the subcontractors being replaced. This clause may be modified upon approval of the requested substitutions by the Contracting Officer.

(d) This clause is not intended to grant consent to the above subcontracts. Subcontract consent will be granted in accordance with EPA procedures and the clause of this contract entitled "Subcontracts."

(End of Clause)

EPA-H-45-101 Rights of Way Land Easement

Prescription: use as desired when applicable.

RIGHTS OF WAY LAND EASEMENT

The government, with assistance and cooperation from the contractor, as needed, shall obtain necessary rights of way, land easements, and any other land agreements necessary to fulfill the requirements of this contract.

(End of Clause)

EPA-H-46-101 Errors and Omissions

Prescription: Include in any contract which includes engineering design services.

ERRORS AND OMISSIONS

(a) The contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the contractor under this contract. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval, acceptance or payment for the services required under this contract shall be construed as a waiver of any rights under this contract, or of any cause of action arising out of the performance of this contract. The contractor is and shall remain liable to the Government in accordance with applicable law for all damages to the Government caused by the contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of Clause)

**EPA-H-47-101 Use of Emergency Response and Removal Services (ERRS) Company
Owned or Affiliated Transportation, Storage, and Disposal Services**

Prescription: Insert in solicitations/contracts where the contractor will be performing under CERCLA.

**USE OF EMERGENCY RESPONSE AND REMOVAL SERVICES (ERRS) COMPANY
OWNED OR AFFILIATED TRANSPORTATION, STORAGE, AND DISPOSAL SERVICES**

(a) The contractor is required to subcontract all transportation of oil and hazardous substances removed from a site unless otherwise directed by the Contracting Officer, and to subcontract the disposal of the materials removed from the site.

(b) If the prime contractor or prime team-subcontractors have fixed facilities for oil or hazardous waste storage or disposal within the same company, such facilities will not be eligible for use under this contract. These restrictions do not preclude contractor facilities from being utilized under other Superfund contracts.

(c) The Contracting Officer may allow the contractor to perform offsite transportation services when the contractor has available the necessary transportation equipment, labor and licenses. The Contracting Officer must make a written determination that the situation on site clearly demonstrates that it is in the Government's best interest to allow the contractor to provide transportation.

(End of Clause)

52.2.9 UCF Section I – Contract Clauses.

EPA-I-16-101 Procedures for Issuing Task Orders – Non-Emergency Work

Prescription: The Contracting Officer may insert this clause, or one substantially the same as this clause, in indefinite-delivery/indefinite-quantity contracts for non-emergency work

PROCEDURES FOR ISSUING TASK ORDERS - NON-EMERGENCY WORK

Note(a) During the effective period of this contract, when a need arises for the performance of work covered under the Statement of Work, the Contracting Officer shall issue a task order under which the work will be performed. All task orders issued will utilize the fixed rates specified in the contract.

(b) The Contracting Officer is the only individual authorized to issue a task order under this contract. The Contracting Officer will issue a request for proposal in writing which shall include a Statement of Work or Performance Work Statement which defines the work to be performed. The request does not obligate the Government to issue the task order, nor does it authorize the contractor to perform any work pursuant to the request for proposal prior to receipt of a fully executed task order.

(c) The contractor shall submit its proposal within ____ calendar days (unless otherwise permitted in writing by the contracting officer) for the services being requested. The proposal shall be itemized as follows:

(1) The number of direct labor hours required for each labor category multiplied by the applicable fully loaded fixed hourly rate specified for each category of labor;

(2) The number of hours/days required for each piece of field equipment (if applicable) multiplied by the applicable fully loaded fixed hourly rate specified for each category of equipment;

(3) Other direct costs (e.g., travel, copying);

(4) Subcontracts (if applicable);

(5) Total proposed price;

(6) Proposed period of performance;

(7) Any other information specified in the request for proposal.

(d) The fully loaded fixed rates utilized in (c) above shall be those specified in the contract for the corresponding contract year in effect at the time the task order is issued, the proposal is prepared, or for the period in which the Government anticipates work will be performed.

(e) Upon receipt of the proposal, the Contracting Officer shall, within ____ calendar days, take one of the following actions:

(1) If all proposal elements are determined to be appropriate for the requested work, and the Contracting Officer determines that the proposed price is fair and reasonable, the Contracting Officer shall issue a (insert type such as FP, T&M, Labor Hour) Task Order for the work as proposed; or

(2) If the Contracting Officer determines to enter into negotiations with the contractor, and a negotiated agreement is subsequently reached, the Contracting Officer shall issue a (insert type such as FP, T&M, Labor Hour) Task Order embodying those negotiated terms; or

(3) If the Contracting Officer determines to enter into negotiations with the contractor, and an agreement is not reached in said negotiations, the Contracting Officer shall have the right to

acquire the services from another source without violating the terms and conditions of this contract.

(f) All task orders are subject to the terms and conditions of this contract. In the event of a conflict between a task order and the contract, the contract shall control.

(g) Ceiling-priced task orders - Under no circumstances is the contractor authorized to exceed the task order ceiling amount. If the task order is incrementally funded, the expenditure limit is the current funded amount. The ceiling and/or expenditure limit amount of a task order can only be increased by a formal modification (Standard Form 30) issued by the Contracting Officer.

(h) The Government is obligated to make payment only for work actually completed, regardless of any estimates of prospective quantities.

(End of Clause)

EPA-I-16-102 Procedures for Issuing Task Orders for Superfund Emergency Response and Removal Services

Prescription: The contracting officer may insert this clause in indefinite-delivery/indefinite-quantity contracts for Superfund emergency response and removal services (e.g., ERRS, START contracts) where task orders will be the mechanism for ordering contractor work. The contracting officer may tailor this clause depending on contract requirements.

PROCEDURES FOR ISSUING TASK ORDERS FOR SUPERFUND EMERGENCY RESPONSE AND REMOVAL SERVICES

(a) Contractor performance shall be authorized by orders issued in accordance with the ORDERING – BY DESIGNATED ORDERING OFFICERS clause.

(b) Nothing contained in this contract shall prohibit the Government from placing other orders or contracts for the same or similar services.

(c) Contractor performance will be ordered by the contracting officer through the issuance of individual task orders. All task orders issued will be fixed-price or at the fixed rates specified in the contract.

(d) In the event of an emergency, a warranted on-scene coordinator (OSC) or contracting officer (CO) may issue a verbal order, to be followed up with a confirming written task order within five (5) working days of verbal notification.

(e) The COR named in the task order will be responsible for the technical administration of task orders issued hereunder. No individual other than the CO has the authority to modify any provision of this contract. Any request for deviation from the terms of this contract, or any task orders issued hereunder, must be submitted to the CO for action.

(f) A separate EPA Form SF 347 will be issued for each task order. Each task order will include:

1. Date of the order, contract number, task order number, name of COR responsible for providing technical direction at the site, accounting and appropriation data, ceiling amount of order, required response time, and required completion date.

2. Location of the site.

3. A Statement of Work, any reports required, and any other special technical requirements, instructions or clearances.

(g) The contractor shall acknowledge receipt of each task order in writing within _____ calendar days after its issuance date. Such acknowledgment shall be submitted to the CO, with a copy forwarded to the COR.

(h) Upon receipt of the task order, if the contractor considers the specified completion date to be unrealistic for the required effort, it shall immediately notify the contracting officer within _____ calendar days of receipt, or one-half (½) of the time specified for performance of the order, whichever is less. The contractor shall provide rationale as to why the completion date is considered unrealistic.

(i) If requested in the task order, the contractor shall submit a work plan. Upon receipt, the CO shall, within _____ calendar days, take one of the following actions:

- (1) If all work plan elements are determined to be appropriate for the requested work, and the CO determines that the proposed price is fair and reasonable, the CO shall modify the task order to accept the work plan as proposed; or

- (2) If the CO determines to enter into negotiations with the contractor, and a negotiated agreement is subsequently reached, the CO shall modify the task order to incorporate those negotiated terms; or

- (3) If the CO determines to enter into negotiations with the contractor, and an agreement is not reached, the CO shall have the right to terminate the task order and acquire the services from another source without violating the terms and conditions of this contract.

(j) The ceiling amount for each task order will be the ceiling price stated therein, and constitutes the maximum amount for which the government shall be liable. Any contractor expenditures or incurred obligations in the performance of the order which exceed the specified ceiling amount shall be at the contractor's own risk. Any increase of the ceiling amount will be authorized in a unilateral written modification to the task order. When the contractor has reason to believe that the labor payment and support costs for the order that will accrue in the next thirty (30) days will bring total cost to over 85% of the ceiling price specified in the order, the contractor shall notify in writing the OSC or RPM, and the CO.

(k) A Standard Form 30 will be used to modify all task orders, and will be signed by the CO and, when applicable, the contractor.

(l) All task orders are subject to the terms and conditions of this contract. In the event of conflict between a task order and the contract, the contract shall control.

(End of Clause)

EPA-I-36-101 Procedures for Issuing Task Orders (A-E Services)

Prescription: The Contracting Officer shall insert this clause, or one substantially the same as this clause, in indefinite delivery/indefinite quantity contracts for Architect-Engineer services.

PROCEDURES FOR ISSUING TASK ORDERS (A-E SERVICES)

(a) During the effective period of this contract, when a need arises for the performance of work covered under the Statement of Work (see Attachment [FILLIN#1#insert number/name]), the Contracting Officer shall request the Contractor to submit a proposal for accomplishing that work. The request for proposal shall be in writing, and it shall include a Statement of Work or Program of Requirements defining the work. This request for proposal shall neither obligate the Government to issue any task orders under this contract, nor shall it authorize the Contractor to perform any work pursuant to any request for proposal prior to receipt of a fully executed task order.

(b) The Contractor shall respond to the request for proposal within [FILLIN#2#insert number] calendar days (or such longer time as may be granted by the Contracting Officer) by submitting a firm-fixed-price proposal for performing the services being requested. The proposal shall be broken down to indicate:

(1) The number of hours of direct labor required for each category of labor times the applicable fully loaded, fixed hourly labor rate established for each category of labor.

(2) Other direct costs (i.e., travel, reproduction, etc.)

(3) Total proposed firm-fixed-price.

(4) Proposed period of performance for the work.

(5) Any other information specified in the request for proposal.

(c) The fully loaded, fixed hourly labor rates used to develop the proposal shall be those specified in Section B for the corresponding Contract Year (1, 2, 3, 4, etc.) in effect at the time the proposal is prepared. In the event a task order is not issued by the end of the Contract Year for which the request for proposal was issued, the Contractor shall be entitled to submit a revised proposal based on the fully loaded, fixed hourly labor rates for the subsequent Contract Year, provided the Government still requires the services.

(d) Upon receipt of the proposal, the Contracting Officer shall, within [FILLIN#3#insert number] calendar days, take one of the following actions:

(1) If all proposal elements are determined to be appropriate for the requested work, and the Contracting Officer determines that the proposed price is fair and reasonable, the Contracting Officer shall issue a firm-fixed-price task order for the work as proposed; or

(2) If the Contracting Officer determines to engage in negotiations with the Contractor, and a negotiated agreement is subsequently reached, the Contracting Officer shall issue a firm-fixed-price task order embodying those negotiated terms; or

(3) If the Contracting Officer determines to enter into negotiations with the Contractor, and after good faith negotiations have occurred, an agreement is not reached, the Contracting

Officer shall have the right to acquire the services from some other source without violating the terms and conditions of this indefinite delivery and/or indefinite quantity contract.

(e) When a task order is issued for design services, the Section H clause, DESIGN WITHIN FUNDING LIMITATIONS (FAR 52.236-22), shall apply and the estimated construction contract price shall be set forth in the task order.

(f) Task orders may be issued via any method provided for in the contract.

(g) The Contractor shall not honor or respond to any request for proposal initiated by anyone other than the Contracting Officer. Should the Contractor receive a request for proposal from anyone other than the Contracting Officer, the Contractor shall immediately report that information to the Contracting Officer.

(End of Clause)

52.2.10 UCF Section J – List of Documents, Exhibits, and Other Attachments.

EPA-J-52-101 List of Attachments

Prescription: Insert the following clause in all solicitations and contracts which contain attachments.

LIST OF ATTACHMENTS

Number	Attachment Title
1	[FILLIN#1#Insert name of Attachment]
2	[FILLIN#2#Insert name of Attachment]
3	[FILLIN#3#Insert name of Attachment]
4	[FILLIN#4#Insert name of Attachment]

(End of Clause)

52.2.11 UCF Section K – Representations, Certifications, and Other Statements of Bidders.

EPA-K-03-101 Reserved.

52.2.12 UCF Section L – Instructions, Conditions, and Notices to Bidders.

EPA-L-09-101 Submission of Organizational Conflict of Interest Plan

Prescription: The Contracting Officer shall insert this provision (or one substantially the same as this provision) in solicitations that require offerors to submit a Conflict of Interest Plan.

SUBMISSION OF ORGANIZATIONAL CONFLICT OF INTEREST PLAN

As part of their cost proposal, offerors shall submit an Organizational Conflict of Interest Plan which outlines the procedures in place to detect and report conflicts of interest (COI), whether actual or potential, throughout the period of contract performance. The plan shall address step by step, the checks and balances in place to detect and report potential or actual COI at the organizational level and at the personal level that could result from activities associated with the Statement of Work. Offerors should refer to the L provision entitled, "Minimum Standards for EPA Contractors' Conflict of Interest Plans," which sets forth the criteria which offerors' COI plans must meet in order to be considered acceptable by the Agency.

The plan will be evaluated in accordance with the criteria set forth in the Section M provision entitled "Evaluation of Conflict of Interest Plan."

(End of Provision)

EPA-L-09-102 Disclosure Requirements for Organizational Conflicts of Interest

Prescription: The Contracting Officer shall insert this provision (or one substantially the same as this provision) in solicitations which have the potential for organizational conflicts of interest.

DISCLOSURE REQUIREMENTS FOR ORGANIZATIONAL CONFLICTS OF INTEREST

(a) The proposed contract requires that the contractor provide [FILLIN#1# (Insert description of services from statement of work)]. Each offeror shall specifically disclose whether it is directly engaged in or if it has a business, financial, or competitive relationship(s) with firms who [FILLIN#2#(Fill in with description of services)].

(b) The Section K provision entitled, ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION (EPAAR 1552.209-72), requires the offeror to certify that it is not aware of any potential organizational conflicts of interest. If the offeror cannot so certify, then the Section L provision entitled, ORGANIZATIONAL CONFLICT OF INTEREST NOTIFICATION (EPAAR 1552.209-70), requires the offeror to provide a disclosure statement with its proposal describing all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and any directors, or any proposed consultant or subcontractors) may have a potential organizational conflict of interest.

(c) The Agency has determined that firms directly engaged in the business or which have a business or financial relationship(s) with firms involved in the activities described in paragraph (a) above (further referred to as "these activities") may have significant potential organizational conflict of interest in relation to the requirements of this solicitation. In addition, a potential organizational conflict of interest may exist with firms that provide consulting and/or technical services related to these activities.

(d) Firms responding to this solicitation are required to disclose any such business relationships. The disclosure statement must address actual and potential organizational conflicts of interest

within the offeror's entire corporate umbrella, including parent company, sister companies, affiliates, subsidiaries, and other interests held by an offeror. In addition to identifying actual and potential organizational conflicts of interest, the disclosure statement shall describe how any such conflict can be avoided, neutralized, or mitigated. The EPA Contracting Officer will determine an offeror's eligibility for award based on the information provided in the disclosure statement.

(e) The purpose of requiring the information covered by paragraphs (b) and (d) above is to provide the Agency with an opportunity to assess its vulnerabilities relative to organizational conflicts of interest of individual offerors prior to award. The Agency recognizes that there exists a need for firms to gain the requisite technical experience necessary to fulfill the requirements of the proposed contract and that such experience is often gained through provision of consulting or related technical services to firms who are involved in these activities. Accordingly, the fact that a firm has, or plans to work for a company who is involved in these activities will not necessarily disqualify the firm for consideration for award on the basis of actual or potential conflicts of interest. The more dependent a firm is on commercial work that relates to these activities, the greater the risk to the Agency that there will arise during contract performance a significant number of conflict of interest situations which would preclude the Agency from using the contractor's support. There is no set formula for determining how much corporate business involving these activities would result in a determination by the Contracting Officer that award to a particular offeror would not be in the best interest of the Government due to organizational conflicts of interest concerns; each offeror will be evaluated individually on the basis of the information disclosed pursuant to the requirements of this provision and upon the adequacy of the offeror's plan for avoiding, neutralizing, or mitigating such conflicts. In summary, the Agency is seeking a technically qualified firm which can demonstrate that its corporate base of activities will not impact its ability to provide unbiased work products to the Agency under the proposed contract.

(End of Provision)

EPA-L-09-103 Minimum Standards for EPA Contractor's Conflict of Interest Plans

Prescription: The Contracting Officer shall insert this provision, or one substantially the same as this provision, in solicitations that will require offerors to submit a Conflict of Interest Plan.

MINIMUM STANDARDS FOR EPA CONTRACTOR'S CONFLICT OF INTEREST PLANS

1. PURPOSE

The Environmental Protection Agency (EPA) has identified a need to avoid, neutralize, or mitigate actual and potential contractor conflicts of interest (COI). To accomplish this, contractors are required to have a COI plan for identifying and reporting actual and potential COI. The purpose of this document is to set forth the minimum standards for a contractor's COI plan.

2. COI PLAN

The contractor's COI Plan is a document which describes the procedures a company uses to

identify and report COI. Generally, a contractor's corporate COI plan will describe how a company, in its entirety, addresses conflicts, and will not be contract or program specific. The plan may also describe the options a company will consider proposing to avoid, neutralize, or mitigate a COI whenever a conflict is identified. The plan will be evaluated and approved by the applicable EPA Contracting Officer (CO) if the COI Plan meets the EPA's minimum requirements for detecting and reporting conflicts of interest. Contractor's COI Plans should be identified by a version number, date, and applicable CO for any previously approved COI Plan.

3. MINIMUM STANDARDS FOR CONTRACTORS' COI PLANS

A. Corporate Structure

The COI Plan shall describe any parent relationship and list all affiliates, subsidiaries, and sister companies, etc. Generally this need not exceed three corporate tiers, unless a relationship exists beyond three tiers that would potentially create a conflict. In such a case, relationships beyond three tiers should also be included in the COI Plan. Contractors should report changes in its corporate structure to the Agency throughout contract performance.

Contractors are invited to include under this section a company profile. The profile should discuss all pertinent information relevant to COI including a summary of a contractor's primary and/or environmental business functions and activities. This background information will be very useful to COS when evaluating whether or not a contractor has a COI.

B. Searching and Identifying COI

The COI Plan shall include a requirement describing when a COI search must be performed by company personnel and clearly identify the procedures to be followed. The searching requirement shall encompass all work related to all clients for whom work was performed over the last three years, all current work, all sites (if applicable) and any future work reflected in marketing proposals. Contractors must search their records over the past 36 months, or through all available records for a new company until 36 months of records are accumulated, from the time of receipt of the work from EPA. However, contractors are encouraged to search back as far as a company's records cover.

C. Data Base

The COI Plan shall require a data base that includes all necessary information for a contractor to review its past work (at a minimum over the past 36 months or through all available records for a new company until 36 months of records are accumulated), work in progress, and work the company may be pursuing under any marketing proposals. This requirement does not establish any particular type or kind of retrieval system, however, the data base shall contain, at a minimum, the following information and capabilities.

- (1) a list of the company's past and public clients;
- (2) a description of the type(s) of work that was performed and other pertinent information;
- (3) a list of the past sites (when applicable) a contractor has worked on;
- (4) a list of site name(s) (when applicable) related to any work performed;
- (5) the ability to search and retrieve the information in the data base; and
- (6) dollar value of work performed.

If applicable, the COI Plan shall include provisions for supplemental searches of parent, affiliate, subsidiary, or sister company records. The COI Plan shall also describe any cross-checks used by the company when searching COI issues.

D. Personal Certification

At a minimum, the COI Plan shall require ALL employees of the company performing work under an EPA Superfund and/or Non-Superfund contract, including work on a site, work relating to a site, work pertaining to a CERCLA/RCRA action, or work that may endanger a CERCLA enforcement action, to sign a personal certification. EPA recommends a policy whereby all company employees are required to sign such a certification rather than only those employees working under an EPA contract. The certification shall require at a minimum, that the individual agrees to report to the proper company authority any personal COI and that the individual has read and understands the company's COI Plan and procedures. Employee certifications shall be retained by the company.

E. Work Assignment (WA), Technical Direction Document (TDD), Task Order (TO), or Delivery Order (DO) Notification and Certification

The COI Plan shall describe the process the company requires for notifying the Agency prior to beginning work, and for submission of its WA/TDD/TO/DO certification within 20 days of receipt of the work from EPA.

NOTE: WA/TDD/TO/DO certifications are NOT required if the contract contains an annual certification requirement. Nevertheless, the contractor's COI Plan should address the procedures to be followed for WA/TDD/TO/DO certifications.

F. Annual Certification

The COI Plan shall describe the process the company requires for submission of its annual certification.

NOTE: Annual certification is NOT required if the contract contains a WA/TDD/TO/DO certification requirement. Nevertheless, the contractor's COI Plan should address the procedures to be followed for annual certifications.

G. Notification and Documentation

The COI Plan shall clearly delineate the official within the company responsible for making COI determinations. Generally, this would be someone at a middle to upper level of management. The responsible official shall be free of any personal conflicts for the purpose of making COI determination; e.g., a program manager who receives bonuses based on the total amount of sales may not be free of conflicts.

The plan shall clearly identify the process that is required when notifying the EPA of any actual or potential COI and the actions that the company has taken or will take to avoid, neutralize, or mitigate the conflict. In addition, the contractor shall document all COI searches related to EPA work, whether or not an actual or potential COI has been identified.

H. Training

The COI Plan shall require all employees of the company to receive basic COI training and that

each employee receive COI awareness training at least annually. The company's COI Plan shall be available for all employees to review. Annual awareness training shall include, at a minimum, a review of the certification language and any changes that may have occurred in the company's COI Plan. In addition, companies are encouraged to routinely disseminate to their employees current COI information.

I. Subcontractor's COI Plans

The COI Plan shall describe the process and mechanism by which the company will monitor its subcontractors to ensure all subcontractors are complying with the COI provisions in their contracts. It is important that subcontractors identify and report COI, as well as submit Limitation of Future Contracting (LOFC) requests for approval.

(End of Provision)

EPA-L-09-104 Contractor Teaming Arrangements

Prescription: Insert the provision or one substantially the same into multiple-award contract solicitations that are subject to the fair opportunity to be considered task order award process, and where it is appropriate to avoid any appearance of or actual conflicts of interest in order to ensure meaningful competition at the task order level.

CONTRACTOR TEAMING ARRANGEMENTS

No single offeror may receive more than one contract award. A firm cannot submit a proposal as a prime contractor and also as a partner in a Joint Venture under this acquisition. In addition, a firm cannot submit a proposal as a partner in more than one Joint Venture under this acquisition.

(End of Provision)

EPA-L-12-101 Proposed Contract Start Date

Prescription: Insert this provision in negotiated solicitation documents when it is necessary to identify a proposed contract start date.

PROPOSED CONTRACT START DATE

For proposal preparation purposes, offerors may assume a contract start date of [FILLIN#1#insert date].

(End of Provision)

EPA-L-15-101 Preproposal Conference

Prescription: Include a notice similar to the following in negotiated solicitations when a preproposal conference is to be held.

PREPROPOSAL CONFERENCE

EPA will conduct a preproposal conference at [FILLIN#1#insert time] on [FILLIN#2#insert date] at:

[FILLIN#3# Insert address of preproposal conference]

Offerors planning to attend the conference must provide written notification to the contracting officer [FILLIN#4#name and e-mail address] and if applicable, the contract specialist, [FILLIN#5# name and e-mail address], at least [FILLIN#6#insert number of days] calendar days prior to the conference date.

(End of Notice)

EPA-L-15-102 Technical Questions

Prescription: Contracting officers shall include Provision EPA-L-15-102 in solicitations when technical questions may be submitted and submissions are required to be sent through FedConnect in accordance with IPN 14-04. Alternate I shall be used when submittal through FedConnect is not required, such as an exception from IPN 14-04.

TECHNICAL QUESTIONS

Offerors must submit all technical questions concerning this solicitation electronically through FedConnect. In order to submit questions, offerors must register in FedConnect at www.fedconnect.net, see main page for registration instructions. For assistance in registering or for other FedConnect technical questions please call the FedConnect Help Desk at (800) 899-6665 or email at support@fedconnect.net. Only those technical questions posted through FedConnect will be accepted. EPA must receive technical questions no later than [FILLIN#1#insert number of days] calendar days after the issuance date of this solicitation. EPA will utilize FedConnect to issue amendments to the solicitation (e.g., to answer technical questions which may affect proposal submittal). EPA will not reference the source of the questions.

(End of Provision)

EPA-L-15-102 Technical Questions Alternate I

Prescription: Contracting officers shall include Provision EPA-L-15-102 in negotiated procurement solicitations when submissions are required to be sent through FedConnect in accordance with IPN 14-04. Alternate I shall be used when submittal through FedConnect is not required, such as an exception from IPN 14-04.

TECHNICAL QUESTIONS ALTERNATE I

Offerors must submit all technical questions concerning this solicitation in writing to the contracting officer [FILLIN#1#name and e-mail address], and if applicable, the contract specialist [FILLIN#2#name and e-mail address]. EPA must receive technical questions no later

than [FILLIN#3#insert number of days] calendar days after the issuance date of this solicitation. EPA will answer questions which may affect proposals in an amendment to the solicitation. EPA will not reference the source of the questions.

(End of Provision)

EPA-L-15-103 Notification of Multiple Awards

Prescription: Use when multiple awards are anticipated.

NOTIFICATION OF MULTIPLE AWARDS

- (a) The Government intends to award [FILLIN#1#insert number] contracts from this solicitation.
- (b) An offeror will be eligible to receive an award for only one (1) contract in response to this solicitation. Work under each contract will be performed independently of and simultaneously with work under the other contracts.
- (c) All quantities set forth in this solicitation represent quantities for one (1) of the contracts.
- (d) EPA reserves the right to award only one contract under this solicitation.

(End of Provision)

EPA-L-15-104 Electronic Submission of Proposals/Bids/Offers/Quotes

Prescription: Contracting officers shall include the subject provision in solicitations and request for quotes (RFQs) for proposed contract actions over the micropurchase threshold unless a stated exemption in Section (f) of IPN 14-04 or other applicable guidance applies.

ELECTRONIC SUBMISSION OF PROPOSALS/BIDS/ OFFERS/QUOTES

- (a) Electronic submission of proposals, bids, offers or quotes is required and shall only be accepted through the FedConnect web portal. FedConnect can be accessed at <https://www.fedconnect.net/Fedconnect/>. All responses to questions will be released on FedConnect. For assistance in registering or for other FedConnect technical questions please call the FedConnect Help Desk at (800) 899-6665 or email at support@fedconnect.net. There is no charge for registration in or use of FedConnect.
- (b) All vendors must be registered in the System for Award Management (SAM), as this facilitates vendor credentials validation for FedConnect. Registration may be completed and information regarding the registration process may be obtained at <http://www.sam.gov>. There is no charge for registration in SAM.

(End of Provision)

EPA-L-19-101 Identification of Set-Aside 8(a) Program Applicability

Prescription: Insert this provision in all solicitations. Fill in blanks as appropriate.

IDENTIFICATION OF SET-ASIDE/8(a) PROGRAM APPLICABILITY

This procurement is being processed as follows:

(a) Type of set-aside: [FILLIN#1#8(a) Sole Source]
Percent of the set-aside: [FILLIN#2#Total]

(b) 8(a) Program: [FILLIN#3#Not Applicable]

(End of Provision)

EPA-L-19-102 EPA's Goals for Subcontracting with Small Businesses

Prescription: The contracting officer shall insert this provision, or one substantially the same as this provision, in all solicitations that envision requiring a Subcontract Plan.

EPA'S GOALS FOR SUBCONTRACTING WITH SMALL BUSINESSES

(a) In accordance with FAR 52.219-9, Alternate II, the Contracting Officer is requesting all Large Businesses which submit an offer under a negotiated Request for Proposal (RFP) that is expected to result in a contract which will exceed \$550,000 (\$1,000,000 for construction) and have subcontracting possibilities provide a subcontracting plan with their initial proposal.

(b) In reviewing offeror's subcontracting plans submitted in accordance with the provision entitled, "Utilization of Small Business Concerns," (FAR 52.219-8) and "Small Business Subcontracting Plan," (FAR 52.219-9) EPA will use its own goals as negotiated with SBA as an Agency guideline. EPA's Socio-Economic subcontracting goal currently totals 50.0% of available subcontract dollars. These goals currently breakout as follows:

Percent of Subcontract

Dollars Awarded

Awards to Small Businesses 50.0%

Awards to Small Disadvantaged Businesses 20.0%

Awards to Women-Owned Businesses 7.5%

Awards to HUB Zone Businesses 3.0%

Awards to Service Disabled Veteran 3.0%

(c) These goals are not intended to be mandatory; however, offerors are encouraged to keep these goals in mind when developing their subcontracting plan. Please note that goals must be proposed as a percentage of total dollars being subcontracted.

(End of Provision)

EPA-L-19-103 Principal Investigator Substitution

Prescription: Insert clause in Small Business Innovation Research (SBIR) Solicitations and Contracts.

PRINCIPAL INVESTIGATOR SUBSTITUTION

The SBIR solicitation, evaluation, and award process is an elaborate chain of events involving hundreds of proposals and multiple offices within EPA. It entails the coordination of external peer review panels, the evaluation of proposals, and the ultimate determination of eligibility for award. Consequently, this process can be quite time consuming and delays may be encountered. Accordingly, every effort should be made by an offeror to retain the Principal Investigator (PI) initially identified in their proposal. When circumstances occur beyond an offeror's control such as death, illness, or resignation of a PI, the offeror shall provide acceptable documentation that could include a letter of resignation, copy of an obituary, signed statement by the PI that they are unable to perform based on medical reasons, etc. An offeror, upon notification that its proposal is being considered for award, will be required to agree to the alternate evaluation of the substitute PI, and will have an opportunity to submit a timely resume for a qualified substitute PI. Note, however, that the evaluation of a substitute PI will not improve an offeror's rating, and could actually result in an offeror's failure to receive an award based on inadequate substitute PI qualifications.

(End of Clause)

EPA-L-36-101 Proposal Instructions

Prescription: Contracting officers shall include Provision EPA-L-36-101 in negotiated procurement actions over the micropurchase threshold when submissions are required to be sent through FedConnect. The contracting officer may make revisions, deletions, or additions to this provision as needed to fit an individual acquisition (e.g., page limitations if applicable). The provision requires that all proposals must be submitted electronically and shall only be accepted via FedConnect unless a stated exemption in Section (f) of IPN 14-04 applies. Alternate I shall be used when submittal through FedConnect is not required.

PROPOSAL INSTRUCTIONS

(a) Proposal Instructions

(1) The offeror's response is to be submitted in two volumes. The technical proposal is to be separate from the cost proposal. Responses are subject to the following requirements and limitations as set forth in Attachment _____

VOLUME	TITLE	PAGE LIMIT	ORIGINAL/ COPIES	COMPUTER DISK(S)
I	Technical Proposal	_____double sided*		
II	Cost Proposal	No Limit		

*If applicable*NOTE: This is a total of [Number of] pages, counting fronts and backs. Any pages exceeding the page limitation will not be read or considered. This limitation does not

include resumes, performance questionnaires, charts, figures, or illustrations. The limitation also does not apply to the following (if applicable): -----

(2) Offeror's shall include a cover letter with their proposal. The cover letter shall include, but is not limited to, the following:

(i) The solicitation number;

(ii) The name, address, telephone numbers, facsimile numbers, and electronic addresses of the Offeror;

(iii) Names, titles, telephone numbers, facsimile numbers, and electronic addresses of persons authorized to negotiate with the Government on the Offeror's behalf in connection with this Solicitation;

(iv) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority;

(v) Name, title, and signature of principals of the firm.

(vi) The name, address, telephone number, facsimile number, and electronic address of the individual in the Offeror's organization to be contacted, if necessary, during evaluation of the proposal;

(vii) The complete formal name and address of the Offeror's organization and/or other participants to be used in any resulting contract. Provide Dun and Bradstreet LTD DUNS number for each organization and new entity if one is being created;

(viii) The name, address, telephone numbers, facsimile numbers, and electronic addresses of representatives of the Government agency having administrative cognizance over the Offeror, contractor team arrangement (as defined at FAR 9.601), or parent company, as applicable (such as contract administration within the meaning of FAR 42.3, Audit, and Equal Employment Opportunity); and

(ix) A statement that the Offeror grants to the EPA or its authorized representatives, the right to examine, for purposes of verifying the information submitted, those books, records, documents, and other supporting data that will permit adequate evaluation; and this right may be exercised in connection with any such reviews deemed necessary by the Government.

(3) Notwithstanding any other provision or clause in this solicitation to the contrary, proposals shall be submitted via the FedConnect web portal (www.fedconnect.net). In order to submit proposals, offerors must register in FedConnect at www.fedconnect.net, see main page of FedConnect website for registration instructions. For assistance in registering or for other FedConnect technical questions please call the FedConnect Help Desk at (800) 899-6665 or email at support@fedconnect.net.

(b) Volume-Specific Instructions [Insert volume specific instructions]

(1) Technical proposal instructions -

(i) The technical proposal shall include the Contractor's responses to the criteria/factors listed as Attachment _____ of this solicitation. The technical proposal shall be organized in the same order as the evaluation criteria are presented as Attachment _____ of the solicitation.

(ii) Each section of the proposal shall be titled.

(2) Cost or pricing proposal instructions -

[Insert Cost or pricing proposal instructions]

NOTE 1: It is IMPORTANT that documentation be provided to support proposed rates for any direct labor, overhead, and/or general and administrative expense. Documentation may be in the form of payrolls, financial statements and expense records. Detailed supporting computations

must be provided in support of any proposed indirect rate(s). These computations may include historical as well as budgeted data. There must be an indication in the proposal as to whether the computations are based upon historical or projected data.

NOTE 2: If overhead and G&A rates proposed have been accepted on other Government contracts or have been approved in an audit by a Government agency, substantiating documentation of this acceptance or approval must be included with the proposal. This documentation shall include names of agencies, contract numbers, contract titles, and/or name and telephone number for the cognizant Government auditor.

(c) Proposals which include subcontracting shall also include the results of the prime contractor's evaluation of subcontract cost as required by FAR 15.404-3(b)(2).

(End of Provision)

EPA-L-36-101 Proposal Instructions Alternate I

Prescription: Contracting officers shall include Provision EPA-L-36-101 in negotiated procurement actions over the micropurchase threshold when submissions are required to be sent through FedConnect. The contracting officer may make revisions, deletions, or additions to this provision as needed to fit an individual acquisition (e.g., page limitations if applicable). The provision requires that all proposals must be submitted electronically and shall only be accepted via FedConnect unless a stated exemption in Section (f) of IPN 14-04 applies. Alternate I shall be used when submittal through FedConnect is not required.

PROPOSAL INSTRUCTIONS ALTERNATE I

(a) Proposal Instructions

(1) The offeror's response is to be submitted in two volumes. The technical proposal is to be separate from the cost proposal. Responses are subject to the following requirements and limitations:

VOLUME	TITLE	ORIGINAL(S)	COPIES	DISK(S)
I	Technical Proposal			
II	Cost Proposal			

(2) Proposals shall be single spaced, and prepared on 8 1/2" X 11" recycled paper which is consistent with the requirements of the Section I clause, entitled "Printing Or Copied Double-Sided on Recycled Paper." Two-sided printing is required, except on any foldouts. If foldout pages are used, they shall not exceed 11" X 17". Each offeror shall use Times New Roman 12-point type on narratives, although smaller type size may be used for tables and figures. Margins shall not be less than one inch at top, bottom, and sides, excluding page number(s).

(3) Proposals shall be submitted to one of the below addresses:

(i) For those mailed through the U. S. Postal Service -

[FILLIN#1#Insert Address]

(ii) For those sent by Courier or Hand Carried -

[FILLIN#2#Insert Address]

(4) NOTE: There must be an annotation on the face of the package which shows the RFP number and the closing date.

(b) Volume-Specific Instructions [FILLIN#3#Insert Volume-Specific Instructions]

(1) Technical proposal instructions -

(i) The technical proposal shall include the Contractor's responses to the criteria/factors listed in Section M of this solicitation. The technical proposal shall be organized in the same order as the evaluation criteria are presented in Section M of the solicitation.

(ii) Each section of the proposal shall be titled and tabbed for easy identification. Tabs will not be counted in the overall page count for the volume.

(2) Cost or pricing proposal instructions -

[FILLIN#4#Insert Cost or pricing proposal instructions]

NOTE 1: It is IMPORTANT that documentation be provided to support proposed rates for any direct labor, overhead, and/or general and administrative expense. Documentation may be in the form of payrolls, financial statements and expense records. Detailed supporting computations must be provided in support of any proposed indirect rate(s). These computations may include historical as well as budgeted data. There must be an indication in the proposal as to whether the computations are based upon historical or projected data.

NOTE 2: If overhead and G&A rates proposed have been accepted on other Government contracts or have been approved in an audit by a Government agency, substantiating documentation of this acceptance or approval must be included with the proposal. This documentation shall include names of agencies, contract numbers, contract titles, and/or name and telephone number for the cognizant Government auditor.

(c) Proposals which include subcontracting shall also include the results of the prime contractor's evaluation of subcontract cost as required by FAR 15.404-3(b)(2).

(End of Provision)

EPA-L-36-101 Proposal Instructions Alternate II

Prescription: This provision may be used in solicitations to provide proposal preparation guidance to offerors. Alternate I of this provision may be used when the contracting officer imposes page limitations. Alternate II of this provision shall be used when proposals must be submitted via FedConnect. Alternate III of this provision shall be used when proposals must be submitted via FedConnect and in hard copy. The contracting officer may make revisions, deletions, or additions to this provision as needed to fit an individual acquisition.

PROPOSAL INSTRUCTIONS ALTERNATE II

(a) Proposal Instructions

(1) The offeror's response is to be submitted in two volumes. The technical proposal is to be separate from the cost proposal. Responses are subject to the following requirements and limitations as set forth in Attachment_____

PAGE

ORIGINAL/ COMPUTER

VOLUME	TITLE	LIMIT	COPIES	DISK(S)
I	Technical Proposal	___double sided*		
II	Cost Proposal	No Limit		

*NOTE: This is a total of [Number of] pages, counting fronts and backs. Any pages exceeding the page limitation will not be read or considered. This limitation does not include resumes, performance questionnaires, charts, figures, or illustrations. The limitation also does not apply to the following: [] -

(2) Offeror's shall include a cover letter with their proposal. The cover letter shall include, but is not limited to,

the following:

(i) The solicitation number;

(ii) The name, address, telephone numbers, facsimile numbers, and electronic addresses of the Offeror;

(iii) Names, titles, telephone numbers, facsimile numbers, and electronic addresses of persons authorized to negotiate with the Government on the Offeror's behalf in connection with this Solicitation;

(iv) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority;

(v) Name, title, and signature of principals of the firm.

(vi) The name, address, telephone number, facsimile number, and electronic address of the individual in the Offeror's organization to be contacted, if necessary, during evaluation of the proposal;

(vii) The complete formal name and address of the Offeror's organization and/or other participants to be used in any resulting contract. Provide Dun and Bradstreet LTD DUNS number for each organization and new entity if one is being created;

(viii) The name, address, telephone numbers, facsimile numbers, and electronic addresses of representatives of the Government agency having administrative cognizance over the Offeror, contractor team arrangement (as defined at FAR 9.601), or parent company, as applicable (such as contract administration within the meaning of FAR 42.3, Audit, and Equal Employment Opportunity); and

(ix) A statement that the Offeror grants to the EPA or its authorized representatives, the right to

examine,
for purposes of verifying the information submitted, those books, records, documents, and other supporting data that will permit adequate evaluation; and this right may be exercised in connection with any such reviews deemed necessary by the Government.

(3) Notwithstanding any other provision or clause in this solicitation to the contrary, proposals shall be submitted via the FedConnect® web portal (www.fedconnect.net). In order to submit proposals, offerors must register in FedConnect® at www.fedconnect.net, see main page of FedConnect® website for registration instructions. For assistance in registering or for other FedConnect® technical questions please call the FedConnect® Help Desk at (800) 899-6665 or email at support@fedconnect.net.

(b) Volume-Specific Instructions [Insert volume specific instructions]

(1) Technical proposal instructions -

(i) The technical proposal shall include the Contractor's responses to the criteria/factors listed as Attachment _____ of this solicitation. The technical proposal shall be organized in the same order as the evaluation criteria are presented as Attachment _____ of the solicitation.

(ii) Each section of the proposal shall be titled.

(2) Cost or pricing proposal instructions -
[Insert Cost or pricing proposal instructions]

NOTE 1: It is IMPORTANT that documentation be provided to support proposed rates for any direct labor, overhead, and/or general and administrative expense. Documentation may be in the form of payrolls, financial statements and expense records. Detailed supporting computations must be provided in support of any proposed indirect rate(s). These computations may include historical as well as budgeted data. There must be an indication in the proposal as to whether the computations are based upon historical or projected data.

NOTE 2: If overhead and G&A rates proposed have been accepted on other Government contracts or have been approved in an audit by a Government agency, substantiating documentation of this acceptance or approval must be included with the proposal. This documentation shall include names of agencies, contract numbers, contract titles, and/or name and telephone number for the cognizant Government auditor.

(c) Proposals which include subcontracting shall also include the results of the prime contractor's evaluation of subcontract cost as required by FAR 15.404-3(b)(2).

(End of Provision)

EPA-L-36-101 Proposal Instructions Alternate III

Prescription: This provision may be used in solicitations to provide proposal preparation guidance to offerors. Alternate I of this provision may be used when the contracting officer imposes page limitations. Alternate II of this provision shall be used when proposals must be submitted via FedConnect. Alternate III of this provision shall be used when proposals must be submitted via FedConnect and in hard copy. The contracting officer may make revisions, deletions, or additions to this provision as needed to fit an individual acquisition.

PROPOSAL INSTRUCTIONS ALTERNATE III

(a) Proposal Instructions

(1) The offeror's response is to be submitted in two volumes. The technical proposal is to be separate from the cost proposal. Responses are subject to the following requirements and limitations as set forth in Attachment_____

VOLUME	TITLE	PAGE LIMIT	ORIGINAL/ COPIES	COMPUTER DISK(S)
I	Technical Proposal	____double sided*		
II	Cost Proposal	No Limit		

*NOTE: This is a total of [Number of] pages, counting fronts and backs. Any pages exceeding the page limitation will not be read or considered. This limitation does not include resumes, performance questionnaires, charts, figures, or illustrations. The limitation also does not apply to the following: [] -

(2) Offeror's shall include a cover letter with their proposal. The cover letter shall include, but is not limited to, the following:

(i) The solicitation number;

(ii) The name, address, telephone numbers, facsimile numbers, and electronic addresses of the Offeror;

(iii) Names, titles, telephone numbers, facsimile numbers, and electronic addresses of persons authorized to negotiate with the Government on the Offeror's behalf in connection with this Solicitation;

(iv) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority;

(v) Name, title, and signature of principals of the firm.

(vi) The name, address, telephone number, facsimile number, and electronic address of the individual in the

Offeror's organization to be contacted, if necessary, during evaluation of the proposal;

(vii) The complete formal name and address of the Offeror's organization and/or other participants to be

used in any resulting contract. Provide Dun and Bradstreet LTD DUNS number for each organization and new entity if one is being created;

(viii) The name, address, telephone numbers, facsimile numbers, and electronic addresses of representatives

of the Government agency having administrative cognizance over the Offeror, contractor team arrangement

(as defined at FAR 9.601), or parent company, as applicable (such as contract administration within the

meaning of FAR 42.3, Audit, and Equal Employment Opportunity); and

(ix) A statement that the Offeror grants to the EPA or its authorized representatives, the right to examine,

for purposes of verifying the information submitted, those books, records, documents, and other supporting

data that will permit adequate evaluation; and this right may be exercised in connection with any such

reviews deemed necessary by the Government.

(3) Notwithstanding any other provision or clause in this solicitation to the contrary, the original technical and cost proposal shall be submitted via the FedConnect® web portal

(www.fedconnect.net) as the official submission. In order to submit the original proposal via FedConnect®, offerors must register in Fedconnect at www.fedconnect.net, see main page of FedConnect® website for registration instructions. For assistance in registering or for other FedConnect® technical questions please call the FedConnect® Help Desk at (800) 899-6665 or email at support@fedconnect.net.

(4) Copies of the proposals shall be provided in hard copy, single spaced, and prepared on 8 1/2" X 11" recycled paper, consistent with the requirements of the Section I clause "Printing Or Copied Double-Sided on Recycled Paper." Two-sided printing is required, except on any foldouts. If foldout pages are used, they shall not exceed 11" X 17". Each foldout shall count as two (2) pages. Each offeror shall use Times New Roman 12-point type on narratives, although smaller type size may be used for tables and figures. All page margins shall not be less than one inch, excluding page number(s). Hard copies of the proposals shall be submitted to one of the below addresses:

(i) For those mailed through the U. S. Postal Service -
[Insert Address]

(ii) For those sent by Courier or Hand Carried -

[Insert Address]

(iii) NOTE: There must be an annotation on the face of the package which shows the RFP number and the closing date.

(b) Volume-Specific Instructions [Insert volume specific instructions]

(1) Technical proposal instructions -

(i) The technical proposal shall include the Contractor's responses to the criteria/factors listed as Attachment _____ of this solicitation. The technical proposal shall be organized in the same order as the evaluation criteria are presented as Attachment _____ of the solicitation.

(ii) Each section of the proposal shall be titled. Hard copy submissions shall also be tabbed for easy identification. Tabs will not be counted in the overall page count for the volume.

(2) Cost or pricing proposal instructions -
[Insert Cost or pricing proposal instructions]

NOTE 1: It is IMPORTANT that documentation be provided to support proposed rates for any direct labor, overhead, and/or general and administrative expense. Documentation may be in the form of payrolls, financial statements and expense records. Detailed supporting computations must be provided in support of any proposed indirect rate(s). These computations may include historical as well as budgeted data. There must be an indication in the proposal as to whether the computations are based upon historical or projected data.

NOTE 2: If overhead and G&A rates proposed have been accepted on other Government contracts or have been approved in an audit by a Government agency, substantiating documentation of this acceptance or approval must be included with the proposal. This documentation shall include names of agencies, contract numbers, contract titles, and/or name and telephone number for the cognizant Government auditor.

(c) Proposals which include subcontracting shall also include the results of the prime contractor's evaluation of subcontract cost as required by FAR 15.404-3(b)(2).

(End of Provision)

EPA-L-36-102 Submission of Original Bid Guarantee (Construction)

Prescription: The contracting officer may insert this provision, or one substantially the same as this provision, in those contracts that require bidders to submit bid bonds.

SUBMISSION OF ORIGINAL BID GUARANTEE (CONSTRUCTION)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in the Section I clause BID GUARANTEE (FAR 52.228-1), in the amount of twenty percent (20%) of the bid price or \$3,000,000, whichever is less. The bid bond penal sum may be expressed in terms of a percentage of the bid price or may be expressed in U.S. dollars and cents. A copy of Standard Form 24 is included as Attachment [FILLIN#1#insert number] to this solicitation.

(b) Although facsimile bids are authorized in accordance with the Section L provision FACSIMILE BIDS (FAR 52.214-31), the Government will not accept a facsimile bid guarantee. The bid guarantee must be the original in accordance with the Section I clause BID GUARANTEE (FAR 52.228-1) and must be received by the time set for receipt of offers.

(End of Provision)

EPA-L-46-101 Instructions for the Preparation of a Quality Management Plan

Prescription: The contracting officer shall insert this provision, or one substantially the same, in solicitations which require a Quality Management Plan which is to be evaluated as part of the technical evaluation criteria.

INSTRUCTIONS FOR THE PREPARATION OF A QUALITY MANAGEMENT PLAN

(a) Each offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Management Plan (QMP) setting forth the offeror's capability for quality assurance. The plan shall address the following:

- (1) A statement of policy concerning the organization's commitment to implement a Quality Control/Quality Assurance program to assure generation of measurement data of adequate quality to meet the requirements of the Statement of Work.
- (2) An organizational chart showing the position of a Quality Assurance function or person within the organization. It is highly desirable that the Quality Assurance function or person be independent of the functional groups which generate measurement data.
- (3) A delineation of the authority and responsibilities of the Quality Assurance function or person and the related data quality responsibilities of other functional groups of the organization.
- (4) The type and degree of experience in developing and applying Quality Control/Quality Assurance procedures to the proposed sampling and measurement methods needed for performance of the Statement of Work.
- (5) The background and experience of the proposed personnel relevant to accomplish the Quality Assurance specifications in the Statement of Work.
- (6) The offeror's general approach for accomplishing the Quality Assurance specifications in the Statement of Work.

(b) Additional information on EPA requirements for the Quality Management Plan can be accessed at the following: <http://www.epa.gov/quality/qs-docs/r2-final.pdf>

(End of Provision)

52.2.13 UCF Section M – Evaluation Factors for Award.**EPA-M-09-101 Evaluation of Conflict of Interest Plan**

Prescription: The Contracting Officer shall insert this provision, or one substantially the same as this provision, in solicitations that will require offerors to submit a Conflict of Interest Plan

EVALUATION OF CONFLICT OF INTEREST PLAN

The plan described in the Section L provision entitled, "Submission of Organizational Conflict of Interest Plan" will be evaluated as acceptable or not acceptable. Notwithstanding the evaluation of an offer with respect to the technical evaluation criteria or the evaluation of an offeror's cost, an offeror who submits a plan that ultimately is unacceptable at time of award will not be eligible for a contract award.

(End of Provision)

EPA-M-09-102 Evaluation of Organizational Conflict of Interest Disclosure Statement

Prescription: The Contracting Officer shall insert this provision, or one substantially the same as this provision, in solicitations which include the provision, "Disclosure Requirements for Organizational Conflict of Interest."

EVALUATION OF ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE STATEMENT

The disclosure statement described in the Section L provision entitled, "Disclosure Requirements for Organizational Conflict of Interest" will be evaluated as acceptable or not acceptable. Notwithstanding the evaluation of an offer with respect to the technical evaluation criteria or the evaluation of an offeror's cost, an offeror who submits a disclosure statement that ultimately is unacceptable at time of award will not be eligible for a contract award.

(End of Provision)

EPA-M-15-101 Evaluation Factors for Contract Award

Prescription: (a) The contracting officer shall insert the provision EPA-M-15-101 "Evaluation Factors for Contract Award" or one of its alternates in all solicitations when a source selection will be conducted in accordance with FAR Part 15 – *Contracting by Negotiation*.

(1) The contracting officer will use the base provision, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly more important than cost or price.

(2) The contracting officer will use Alternate I, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are approximately equal to cost or price.

(3) The contracting officer will use Alternate II, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly less important than cost or price.

(4) The contracting officer will use Alternate III, or one substantially the same as, when using the lowest price technically acceptable (LPTA) process. This alternate should also be used if a combination of tradeoff and LPTA processes will be used. Paragraph (a) of Alternate III may be tailored by the contracting officer as appropriate when using a combination process.

(b) Evaluation factors and significant subfactors should be prepared in accordance with FAR 15.305 and EPAAG 15.3.1-A, and inserted into paragraph (b) of the provision.

EVALUATION FACTORS FOR CONTRACT AWARD

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly more important than cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

[FILL-IN #1: The contracting officer shall state all evaluation factors and significant subfactors that will affect contract award and their relative importance.]

(End of Provision)

EPA-M-15-101 Evaluation Factors for Contract Award, Alternate I

Prescription: (a) The contracting officer shall insert the provision EPA-M-15-101 “Evaluation Factors for Contract Award” or one of its alternates in all solicitations when a source selection will be conducted in accordance with FAR Part 15 – *Contracting by Negotiation*.

(1) The contracting officer will use the base provision, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly more important than cost or price.

(2) The contracting officer will use Alternate I, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are approximately equal to cost or price.

(3) The contracting officer will use Alternate II, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly less important than cost or price.

(4) The contracting officer will use Alternate III, or one substantially the same as, when using the lowest price technically acceptable (LPTA) process. This alternate should also be used if a combination of tradeoff and LPTA processes will be used. Paragraph (a) of Alternate III may be tailored by the contracting officer as appropriate when using a combination process.

(b) Evaluation factors and significant subfactors should be prepared in accordance with FAR 15.305 and EPAAG 15.3.1-A, and inserted into paragraph (b) of the provision.

EVALUATION FACTORS FOR CONTRACT AWARD, ALTERNATE I

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

[FILL-IN #1: The contracting officer shall state all evaluation factors and significant subfactors that will affect contract award and their relative importance.]

(End of Provision)

EPA-M-15-101 Evaluation Factors for Contract Award, Alternate II

Prescription: (a) The contracting officer shall insert the provision EPA-M-15-101 “Evaluation Factors for Contract Award” or one of its alternates in all solicitations when a source selection will be conducted in accordance with FAR Part 15 – *Contracting by Negotiation*.

(1) The contracting officer will use the base provision, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly more important than cost or price.

(2) The contracting officer will use Alternate I, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are approximately equal to cost or price.

(3) The contracting officer will use Alternate II, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly less important than cost or price.

(4) The contracting officer will use Alternate III, or one substantially the same as, when using the lowest price technically acceptable (LPTA) process. This alternate should also be used if a combination of tradeoff and LPTA processes will be used. Paragraph (a) of Alternate III may be tailored by the contracting officer as appropriate when using a combination process.

(b) Evaluation factors and significant subfactors should be prepared in accordance with FAR 15.305 and EPAAG 15.3.1-A, and inserted into paragraph (b) of the provision.

EVALUATION FACTORS FOR CONTRACT AWARD, ALTERNATE II

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

[FILL-IN #1: The contracting officer shall state all evaluation factors and significant subfactors that will affect contract award and their relative importance.]

(End of Provision)

EPA-M-15-101 Evaluation Factors for Contract Award, Alternate III

Prescription: (a) The contracting officer shall insert the provision EPA-M-15-101 “Evaluation Factors for Contract Award” or one of its alternates in all solicitations when a source selection will be conducted in accordance with FAR Part 15 – *Contracting by Negotiation*.

(1) The contracting officer will use the base provision, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly more important than cost or price.

(2) The contracting officer will use Alternate I, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are approximately equal to cost or price.

(3) The contracting officer will use Alternate II, or one substantially the same as, when using the tradeoff process and all evaluation factors other than cost or price, when combined, are significantly less important than cost or price.

(4) The contracting officer will use Alternate III, or one substantially the same as, when using the lowest price technically acceptable (LPTA) process. This alternate should also be used if a combination of tradeoff and LPTA processes will be used. Paragraph (a) of Alternate III may be tailored by the contracting officer as appropriate when using a combination process.

(b) Evaluation factors and significant subfactors should be prepared in accordance with FAR 15.305 and EPAAG 15.3.1-A, and inserted into paragraph (b) of the provision.

EVALUATION FACTORS FOR CONTRACT AWARD, ALTERNATE III

(a) The Government will make award on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. In the event that there are two or more technically acceptable, equal price offers, the Government will consider socioeconomic, environmental and other similar factors, as listed below in descending order of importance:

[FILL_IN #1: The contracting officer shall state all other factors that will be considered in the event that there are two or more technically acceptable, equal price offers.]

(b) Factors and significant subfactors for technical acceptability evaluation:

[FILL_IN #2: The contracting officer shall state all evaluation factors and significant subfactors that establish the requirements of acceptability.]

(End of Provision)

EPA-M-16-101 Evaluation of Award Terms

Prescription: Insert the following solicitation provision when award term incentives are contemplated. The basic provision shall be used when award term incentives will be evaluated with the base requirement and any stated options. Alternate I shall be used when award term

incentives will be evaluated with the base requirement exclusive of any stated options. Alternate II shall be used when award term incentives will not be evaluated for award purposes.

EVALUATION OF AWARD TERMS

Except when it is determined not to be in the Government's best interests, and in accordance with EPAAR 1552.216-79, *AWARD TERM AVAILABILITY OF FUNDS*, the Government will evaluate offers for award purposes by adding the total price for all award terms to the total price for the base requirement exclusive of any stated options.

(End of Provision)

EPA-M-16-101 Evaluation of Award Terms Alternate I

Prescription: Insert the following solicitation provision when award term incentives are contemplated. The basic provision shall be used when award term incentives will be evaluated with the base requirement and any stated options. Alternate I shall be used when award term incentives will be evaluated with the base requirement exclusive of any stated options. Alternate II shall be used when award term incentives will not be evaluated for award purposes.

EVALUATION OF AWARD TERMS, ALTERNATE I

Except when it is determined not to be in the Government's best interests, and in accordance with EPAAR 1552.216-79, *AWARD TERM AVAILABILITY OF FUNDS*, the Government will evaluate offers for award purposes by adding the total price for all award terms to the total price for the base requirement exclusive of any stated options.

(End of Provision)

EPA-M-16-101 Evaluation of Award Terms Alternate II

Prescription: Insert the following solicitation provision when award term incentives are contemplated. The basic provision shall be used when award term incentives will be evaluated with the base requirement and any stated options. Alternate I shall be used when award term incentives will be evaluated with the base requirement exclusive of any stated options. Alternate II shall be used when award term incentives will not be evaluated for award purposes.

EVALUATION OF AWARD TERMS, ALTERNATE II

Except when it is determined not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding only the price for the base requirement and any stated options (i.e., award term incentives will not be evaluated for award purposes).

(End of Provision)

